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**APPENDIX**  
**EXTENSION OF TENURE OF GOVERNMENT**  
**CONTROL OF RAILROADS**

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**HEARINGS**

**BEFORE THE**

**COMMITTEE ON INTERSTATE COMMERCE**  
**UNITED STATES <sup>CONGRESS</sup> SENATE**

**SIXTY-FIFTH CONGRESS**

**THIRD SESSION**

**ON**

**THE EXTENSION OF TIME FOR RELINQUISHMENT BY THE**  
**GOVERNMENT OF RAILROADS TO CORPORATE**  
**OWNERSHIP AND CONTROL**

**IN THREE VOLUMES**  
**VOLUME 2**

**(Volumes 2 and 3 contain Report of Hearings before the Joint Subcommittee of**  
**Congress, November 20, 1917, to December 19, 1918.)**

**Printed for use of the Committee on Interstate Commerce**



**WASHINGTON**  
**GOVERNMENT PRINTING OFFICE**  
**1919**

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COMMITTEE ON INTERSTATE COMMERCE.

UNITED STATES SENATE.

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## APPENDIX

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VOLUMES 2 AND 3 OF

# EXTENSION OF TENURE OF GOVERNMENT CONTROL OF RAILROADS

Contain the Complete Hearings Before the

## JOINT SUBCOMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.

Ordered Printed by the

### COMMITTEE ON INTERSTATE COMMERCE

SENATE OF THE UNITED STATES

Sixty-fifth Congress, Third Session

As an appendix to the hearings on the extension of time for relinquishment by the Government of Railroads to corporate ownership and control, held January 3 to February 21, 1919.



## PRELIMINARY STATEMENT.

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### INVESTIGATION OF THE CONDITIONS RELATING TO INTERSTATE AND FOREIGN COMMERCE AND THE NECESSITY FOR FURTHER LEGISLATION RELATING THERETO.

CONGRESS OF THE UNITED STATES,  
JOINT COMMITTEE ON INTERSTATE COMMERCE,  
ROOM 326, SENATE OFFICE BUILDING,  
Washington, D. C.

#### 1. INITIATION OF PROCEEDINGS.

The initiative of the proceedings provided for by Senate joint resolution 60 was taken by President Woodrow Wilson in a message to the Congress of the United States, presented December 7, 1915, in the following words:

#### 2. PRESIDENT'S MESSAGE.

"In the meantime may I make this suggestion? The transportation problem is an exceedingly serious and pressing one in this country. There has from time to time of late been reason to fear that our railroads would not much longer be able to cope with it successfully, as at present equipped and coordinated. I suggest that it would be wise to provide for a commission of inquiry to ascertain by a thorough canvass of the whole question whether our laws as at present framed and administered are as serviceable as they might be in the solution of the problem. It is obviously a problem that lies at the very foundation of our efficiency as a people. Such an inquiry ought to draw out every circumstance and opinion worth considering, and we need to know all sides of the matter if we mean to do anything in the field of Federal legislation.

"No one, I am sure, would wish to take any backward step. The regulation of the railways of the country by Federal commission has had admirable results and has fully justified the hopes and expectations of those by whom the policy of regulation was originally proposed. The question is not what should we undo. It is whether there is anything else we can do that would supply us with effective means, in the very process of regulation, for bettering the conditions under which the railroads are operated and for making them more useful servants of the country as a whole. It seems to me that it might be the part of wisdom, therefore, before further legislation in this field is attempted, to look at the whole problem of coordination and efficiency in the full light of a fresh assessment of circumstances and opinion as a guide to dealing with the several parts of it."

#### 3. THE RESOLUTION.

Senate joint resolution No. 60 was introduced in the Senate and, after amendment by including the investigation of Government ownership, was adopted by both Houses of Congress. It was approved by the President July 20, 1916, and reads as follows:

"[Public Resolution—No. 25—64th Congress.]

"[S. J. Res. 60.]

"JOINT RESOLUTION Creating a joint subcommittee from the membership of the Senate Committee on Interstate Commerce and the House Committee on Interstate and Foreign Commerce to investigate the conditions relating to interstate and foreign commerce, and the necessity of further legislation relating thereto, and defining the powers and duties of such subcommittee.

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Committee of the Senate and the Committee of the House of Representatives on Interstate

and Foreign Commerce, through a joint subcommittee to consist of five Senators and five Representatives, who shall be selected by said committees, respectively, be, and they hereby are, appointed to investigate the subject of the Government control and regulation of interstate and foreign transportation, the efficiency of the existing system in protecting the rights of shippers and carriers and in promoting the public interest, the incorporation or control of the incorporation of carriers, and all proposed changes in the organization of the Interstate Commerce Commission and the act to regulate commerce, also the subject of Government ownership of all public utilities, such as telegraph, wireless, cable, telephone, express companies, and railroads engaged in interstate and foreign commerce and report as to the wisdom or feasibility of Government ownership of such utilities and as to the comparative worth and efficiency of Government regulation and control as compared with Government ownership and operation, with authority to sit during the recess of Congress and with power to summon witnesses, to administer oaths, and to require the various departments, commissions, and other Government agencies of the United States to furnish such information and render such assistance as may, in the judgment of the joint subcommittee, be deemed desirable, to appoint necessary experts, clerks, and stenographers, and to do whatever is necessary for a full and comprehensive examination and study of the subject and report to Congress on or before the second Monday in January, nineteen hundred and seventeen; that the sum of \$24,000, or so much thereof as is necessary to carry out the purposes of this resolution and to pay the necessary expenses of the subcommittee and its members, is hereby appropriated out of any money in the Treasury not otherwise appropriated. Said appropriation shall be immediately available and shall be paid out on the audit and order of the chairman or acting chairman of said subcommittee, which audit and order shall be conclusive and binding upon all departments as to the correctness of the accounts of such subcommittee.

"Approved, July 20, 1916."

#### 4. MEMBERSHIP.

Following the adoption of the resolution the following Members of the Senate and House were appointed members of the joint subcommittee:

*Senate.*—Francis G. Newlands, Nevada; Joseph T. Robinson, Arkansas; Oscar W. Underwood, Alabama; Albert B. Cummins, Iowa; Frank B. Brandegee, Connecticut.

*House of Representatives.*—William C. Adamson, Georgia; Thetus W. Sims, Tennessee; William A. Cullop, Indiana; John J. Esch, Wisconsin; Edward L. Hamilton, Michigan.

#### 5. ORGANIZATION.

The members of the joint subcommittee met and organized, selecting as chairman Francis G. Newlands and vice chairman William C. Adamson. They also appointed Frank Healy as clerk of the committee and Willis J. Davis as assistant clerk, and designated Messrs. Galt & Hull, Southern Building, Washington, D. C., as official reporters.

#### 6. DATE OF HEARINGS.

The date of the first hearing was set for November 20, 1916, at 10 o'clock a. m., at room 326, Senate Office Building, Washington, D. C.

#### 7. ARRANGEMENT OF HEARINGS.

It is the desire of the committee to give ample opportunity to all interested in or having any relation to the subject matter of the proposed inquiry to express their views. But the committee would like early notice of the subjects to be discussed by the various persons appearing before it, so that the hearing can be, as far as practicable, in orderly sequence as to subjects. The purpose of the committee is to hear regarding Government regulation and Government ownership the opinions of economists and publicists of eminence, representatives of the Interstate Commerce Commission, the National Association of State Railroad Commissioners, State railroad and public utility commissions, representatives of the railroad executives and labor organizations, representatives of farming organizations and farmers, shippers and bankers, representatives of

chamber of commerce, and other important business and industrial organizations.

#### 8. SUBJECTS TO BE CONSIDERED.

The subjects to be considered are stated in general terms in the joint resolution and cover—

##### FIRST.

“\* \* \* the subject of the Government control and regulation of interstate and foreign transportation,” including therein specifically:

- (a) “\* \* \* the efficiency of the existing system in protecting the rights of shippers and carriers and in promoting the public interest.”
- (b) “\* \* \* the incorporation or control of the incorporation of carriers.”
- (c) “\* \* \* and all proposed changes in the organization of the Interstate Commerce Commission and the act to regulate commerce.”

##### SECOND.

“\* \* \* the subject of Government ownership of all public utilities, such as telegraph, wireless, cable, telephone, express companies, and railroads engaged in interstate and foreign commerce,” including specifically:

- (a) “\* \* \* the wisdom or feasibility of Government ownership of such utilities.”
- (b) “\* \* \* the comparative worth and efficiency of Government regulation and control as compared with Government ownership and operation.”

#### 9. GOVERNMENT REGULATION AND CONTROL.

Under this head, without excluding other questions, attention is particularly called to the following subjects:

(a) Whether the Interstate Commerce Commission is overloaded and whether its jurisdiction should be confined to questions of discriminations, rebates, and rates, its jurisdiction over other subjects, such as valuation, safety inspection, etc., to be turned over to some other body or bureau to be created by law.

(b) Whether it is necessary to make any change in the organization of the Interstate Commerce Commission with a view to prompt and efficient action; whether it is feasible to increase the number of commissioners and to permit them to divide into several departments for the consideration of cases, and if so whether there shall also be consideration in bank and also whether there shall be appeal from decisions in the department to the commission in bank.

(c) Whether such departments of the Interstate Commerce Commission shall sit in Washington or be assigned to definite traffic areas somewhat after the manner of the judicial circuits, and whether in the latter case there should be provision for their sitting in bank at Washington or for some central body in Washington with the duty of hearing appeals and directing the procedure of the departments.

(d) Whether under the present system the credit of the common carriers is assured with a view to their securing the moneys needed for necessary improvements and extensions in the interest of the public and at reasonable rates of interest. Whether Government regulation of the issue of securities is advisable, and if so whether it is to the interest of the public as well as the carriers that this regulation should be exercised by the National Government and whether it should involve merely publicity or absolute control of the issue of securities. Whether concurrent jurisdiction of the Nation and the States to control such issues is in the interest of the carriers and the public. What will be the field of operations for the State railroad commissions in the interest of the public if the control of securities and the control of rates is vested in the Interstate Commerce Commission. Whether and to what extent within a period of five years it will be necessary to enlarge the facilities of the common carriers in the interests of the public and whether the present system of Government regulation is such as to insure the credit of the carriers with a view to their making additional necessary expenditures.

(e) What is the effect of dual regulation on the parts of the States and the Nation of the rates of carriers. What, if any, contradictions does it involve, and what, if any, discriminations does it involve as between States and localities.

(f) Whether or not any regulation is feasible of the wages and hours of employees of common carriers, and whether or not it is advisable, in the interest

of the public and with a view to maintaining uninterrupted commerce between the States, to take any further legislative action regarding the adjustment of disputes between the carriers and their employees and regarding strikes and lockouts.

(g) Whether any national legislation is required as to the organization of carriers in interstate commerce in the nature of national incorporation, permissive or compulsory, or in the nature of national holding companies under which State corporations may be controlled and unified in their operations in the interest of interstate commerce, and what form of national legislation for the incorporation of carriers or for holding companies owning the stock of State companies, is desirable. How will national incorporation affect the police powers of the States over railroads operating within their boundaries. Will it be advisable, as in the case of the national banks, for the National Government to prescribe a uniform rule for the taxation by the States of railroad properties and securities.

#### 10. GOVERNMENT OWNERSHIP.

"\* \* \* the wisdom or feasibility of Government ownership of such utilities" and "\* \* \* the comparative worth and efficiency of Government regulation and control as compared with Government ownership and operation," including under this head:

(a) The practical results of Government ownership both as to efficiency and economy where actually practiced.

(b) Whether Government ownership is compatible with our system of government and what its effect will be on our governmental institutions.

(c) Whether a system of Government ownership will suit local needs.

(d) A practical method of securing Government ownership, whether by purchase or condemnation of properties, or by purchase or condemnation of bond and stock issues, or otherwise.

\* \* \* \* \*

The views of all who are interested in or have information regarding the foregoing questions are invited by the committee, either by written communication or at the oral hearings.

It is suggested that, with a view to maintaining a logical sequence in the hearings, those participating therein classify their remarks according to the foregoing subheads as far as practicable.

FRANCIS G. NEWLANDS, *Chairman.*

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**APPENDIX**

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**INTERSTATE AND FOREIGN TRANSPORTATION**

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**HEARINGS**

Before the

**JOINT COMMITTEE ON INTERSTATE AND FOREIGN  
COMMERCE, CONGRESS OF THE UNITED STATES**

**Sixty-fourth Congress, First Session**

pursuant to

**PUBLIC J. RES. 25**

**A Joint Resolution Creating a Joint Subcommittee from the Membership of the  
Senate Committee on Interstate Commerce and the House Committee on  
Interstate and Foreign Commerce, to Investigate the Conditions Relating to  
Interstate and Foreign Commerce, and the Necessity of Further Legislation  
Relating Thereto, and Defining the Powers and Duties of Such Subcommittee**

**November 20, 1916, to December 19, 1917**

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**JOINT COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.**

**FRANCIS G. NEWLANDS**, Nevada, *Chairman*.

**WILLIAM C. ADAMSON**, Georgia, *Vice Chairman*.

**JOSEPH T. ROBINSON**, Arkansas.

**THETUS W. SIMS**, Tennessee.

**OSCAR W. UNDERWOOD**, Alabama.

**WILLIAM A. CULLOP**, Indiana.

**ALBERT B. CUMMINS**, Iowa.

**JOHN J. ESCH**, Wisconsin.

**FRANK B. BRANDEGEE**, Connecticut.

**EDWARD L. HAMILTON**, Michigan.

**FRANK HEALY**, *Clerk*.

**WILLIS J. DAVIS**, *Assistant Clerk*.

# INTERSTATE AND FOREIGN TRANSPORTATION.

MONDAY, NOVEMBER 20, 1916.

CONGRESS OF THE UNITED STATES,  
JOINT COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
Washington, D. C.

The Joint Committee on Interstate Commerce met pursuant to call of the chairman in room 326, Senate Office Building, at 10 o'clock a. m. Senator Francis G. Newlands, presiding.

Present: Senator Francis G. Newlands (chairman), Representative William C. Adamson, vice chairman; Senators Robinson, Underwood, Cummins, and Brandegee; Representatives T. W. Sims, John J. Esch, and Edward L. Hamilton.

The joint committee proceeded in pursuance of Senate joint resolution 60, approved by the President on July 20, 1916 (Public J. Res. 25), a joint resolution creating a joint subcommittee from the membership of the Senate Committee on Interstate Commerce and the House Committee on Interstate and Foreign Commerce to investigate the conditions relating to interstate and foreign commerce, and the necessity of further legislation relating thereto, and defining the powers and duties of such subcommittee, which is as follows:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Interstate Commerce Committee of the Senate and the Committee of the House of Representatives on Interstate and Foreign Commerce, through a joint subcommittee to consist of five Senators and five Representatives, who shall be selected by said committees, respectively, be, and they hereby are, appointed to investigate the subject of the Government control and regulation of interstate and foreign transportation, the efficiency of the existing system in protecting the rights of shippers and carriers and in promoting the public interest, the incorporation or control of the incorporation of carriers, and all proposed changes in the organization of the Interstate Commerce Commission and the act to regulate commerce; also the subject of Government ownership of all public utilities, such as telegraph, wireless, cable, telephone, express companies, and railroads engaged in interstate and foreign commerce and report as to the wisdom or feasibility of Government ownership of such utilities and as to the comparative worth and efficiency of Government regulation and control as compared with Government ownership and operation, with authority to sit during the recess of Congress and with power to summon witnesses, to administer oaths, and to require the various departments, commissions, and other Government agencies of the United States to furnish such information and render such assistance as may, in the judgment of the joint subcommittee, be deemed desirable, to appoint necessary experts, clerks, and stenographers, and to do whatever is necessary for a full and comprehensive examination and study of the subject and report to Congress on or before the second Monday in January, nineteen hundred and seventeen; that the sum of \$24,000, or so much thereof as is necessary to carry out the purposes of this resolution and to pay the necessary expenses of the subcommittee and its members, is hereby appropriated out of any money in the Treasury not otherwise appropriated. Said appropriation shall be immediately available and shall be paid out on the audit and order of the chairman or acting chairman of said subcommittee, which audit and order shall be conclusive and binding upon all departments as to the correctness of the accounts of such subcommittee.

The CHAIRMAN. The committee will come to order. This is a meeting of the Joint Congressional Committee appointed under Resolution No. 60. I will make a brief statement and then inquire as to the organizations and bodies and individuals that desire to be heard before this committee, and after that the committee will go into executive session to determine the method of procedure.

Upon the initiative of President Wilson in a message delivered in December last, a congressional joint committee, consisting of five Senators and five Representatives, was authorized by Congress to investigate all the problems relating to transportation, and to make a new survey not only of the defects of the existing system, but of the improvements that may be made in that system.

The committee organized and determined to commence its meetings in Washington on the 20th of November, 1916, and the committee is now assembled for this purpose. The hearings will be continuous.

It is the desire of the committee that there should be represented at the hearing economists and publicists of note, representatives of the Interstate Commerce Commission, the State railroad commissions, chambers of commerce, and boards of trade, the railroad executives and the railroad employees, farmers, and shippers generally throughout the country so that the expression will be representative of every organization, class, and interest connected in any way with the subject of transportation.

The inquiry will be a very wide one. It will relate to every phase of the transportation question, the rail carriers, the river carriers, and the ocean carriers, and the perfection of a harmonious system of transportation embracing rail, river, and ocean carriers that will meet the demands of interstate as well as foreign commerce, and it will also relate to telegraph and telephone lines, express companies, and other public utilities.

It will embrace not only the subject of Government control and regulation of these utilities, but also the wisdom and the feasibility of Government ownership and the comparative worth and efficiency of Government regulation and control as compared with Government ownership and operation.

In this connection the question will be considered as to whether the Interstate Commerce Commission is now overloaded, and if so whether this difficulty should be met by relieving it of many of the supervising and administrative duties which it now exercises or by enlarging and subdividing it so as to enable it to meet the strain of its existing duties, and such others as may be added by legislation.

It is contended by some that the commission should not only be enlarged, but should be divided into departments, each to have the same jurisdiction as the entire commission has now, and that thus the business of the commission will be more quickly dispatched.

It is also suggested by some that the commission ought to be brought nearer to the various localities than it is now; that instead of sitting centrally in Washington it should be divided into departments corresponding to our different traffic areas, so that each department can sit within a given traffic area in contact with its activities and its thought and more quickly solve the problems relating to it.

Then the question comes up, if that method is pursued, as to whether there shall be a central body of appeal at Washington to which appeals may be taken from these various departmental organizations.

Another question of importance that will come up will be the question of the control of railway and other public-utility securities. As it is, most of the State public-utility commissions are regulating the issue of securities upon the railroads within the boundaries of the State over which each has jurisdiction. Thus we may have 48 different sovereignties acting upon the securities of great railway systems not confined in their operation to any particular State, but whose operations are as broad as interstate commerce itself.

It is complained that this complexity of control which affects not only the securities, but the rates, restrains the activities of the corporations themselves, makes their methods of obtaining money for needed improvements and developments very complicated, and frequently defeats their purpose of securing favorable markets, the approval of the securities sometimes being given when the favorable opportunity has passed by.

It is suggested that the United States Government, by reason of its power over interstate commerce, should create a tribunal for that purpose or give such control to the Interstate Commerce Commission. The question then arises whether the regulating commission shall be simply a coordinating body acting in addition to the 48 public-utility commissions created by the various States or whether its action shall be that of an overlord, dominating and controlling, where contradictory, the action of lesser sovereignties. So the question of States rights will be involved in this most interesting subject.

There will also come up the question as to whether the Nation or the States should create the great organizations that serve the purpose of interstate commerce. Thus far we have been content to allow the States to create these corporations, these railroad companies. That served the purpose as long as the railroad system was a feeble system confined to the building of an individual railroad of a limited mileage in this or that State. But as interstate commerce increased and these systems were brought together in a coordinated service over the entire country in interstate commerce it has been claimed that we have not met the economic requirements of the time by creating national organizations under which great railway systems could be incorporated as broad in their operation as the national power of interstate commerce.

There, again, the question of State rights will come up. It will be contended on the part of many of the States that the creation of these gigantic national corporations under national control will tend to diminish the powers of the States, with reference to local requirements as to rates, and may diminish the power of the States as to taxation, and may also diminish to some degree the police powers of the States.

Among others will be the question of taxation. As to whether the States will insist each upon its sovereign right to tax the corporation and its property doing business within the boundaries of that State or whether the National Government, as in the case of national-bank corporations, shall by virtue of its sovereignty over interstate commerce declare a uniform rule, as in the case of the banks, under which taxes shall be levied.

As it is, we find the greatest diversity in the tax laws of various States, some States imposing heavy burdens upon these corporations and others imposing very light burdens; some taxing only the visible property, others taxing the intangible thing termed a franchise; some

of them adopting the market price of the stocks and bonds as the standard and measure of valuation, others contenting themselves simply with the physical valuation of the actual property within the boundaries of the State.

Then in connection with that will come the question of hours and wages of employees. The burdens which constitute the operating expenses of these corporations are in time transferred to the shippers. They can not long rest upon the investors, for if they rest upon them too heavily there will be a decline in the securities, and a consequent difficulty in securing the money for improvements and extensions, and thus the public demands themselves will not be met.

Railway corporations have to raise their entire revenue from the public in the shape of rates for freight and passengers. That revenue goes to the operating expenses, wages of some 1,800,000 employees, the supplies to the railways, the taxes, and the interest upon the stocks and bonds issued. So that the public itself, the ultimate bearer of this entire burden, is most profoundly interested in perfecting a system which will establish the credit of the carriers themselves in such a way as to enable them to obtain money at the lowest rates and yet maintain the value of their securities. A difference of 1 per cent paid to the investors on the \$16,000,000,000 of bonds and stock issued by the railway corporations of this country makes an additional charge of \$160,000,000 annually upon the shippers of the country. Here the question of receiverships and railway reorganizations will also come up for consideration. As to wages and the hours of labor, it is very evident that under present conditions the only ultimate method of settling a difficulty between a railroad and its employees is a resort to force. And the question is whether a nation pretending to some degree of civilization, which has eliminated the doctrine of force from application to controversies between man and man, and which furnishes judicial tribunals for the settlement of those controversies, and which is now and has been for years endeavoring internationally to secure a system under which the nations of the earth will create similar tribunals for the adjustment of international disputes without resort to force—whether such a civilized nation can be content to perpetuate the existing condition of things.

This is a subject of profound thought. It will require the best and the most humane consideration of communities and State and of the Nation itself.

It would seem to be our highest duty to meet this condition, and by eliciting the best thought not only of the corporations affected, not only of the thinkers and economists of the country, but of the men themselves employed by those corporations to create some system under which a resort to force, the most barbaric and brutal of processes, can be avoided for the settlement of disputes between great employers and vast bodies of employees.

In addition to this question of regulation and control of these great public utilities, there is intrusted to this committee the study of the question of Government ownership. It is a question that must be faced. Other nations far advanced in civilization have adopted the system. Recently, under the stress of war, almost all European Governments have taken over the railways. Whether that will be a permanent taking over or only a temporary one, it demonstrates that in conditions of great crises when autocratic powers must be given to

the Government all intelligent Governments drift toward absolute and complete operation of the roads as the only solution of the question.

If we pursue the exercise and the study of Government regulation wisely, persistently, and energetically we may create such a system of regulation as will meet every requirement, both in time of peace and of war, and in exigency of crises. But it seems to be a wise thing for the Government of the United States to ascertain now the history of the countries that have adopted Government ownership and operation of railways, and to watch the experiences of the European countries in this great war in this regard.

In this connection will come the question of the method of taking over the railroads. Shall it be accomplished by an actual valuation of the railways and a condemnation of them, or shall they be taken over by the easier method of taking over the stock and the bonds at their market value, thus at one step having the National Government take the position of stockholder and security holder in these great corporations?

These are a few of the questions which we have before us. It will not be possible for us to come to a speedy conclusion regarding all, but that conclusion will be more quickly arrived at if we have the sympathetic aid of practical men who for years have been conversant with the practical side of the transportation question, of the economists and publicists and national and State regulating commissions of railway executives and workers, commercial bodies, farmers and manufacturers, and shippers generally. We want the best thought of the country in the consideration of these important questions.

I wish to state that some of the members of the committee may desire to emphasize some of the questions which will be considered by this committee, and I will be very glad if hereafter they will present such questions in such form as they desire.

MR. SIMS. Mr. Chairman, is that intended to be the statement of the chairman of the committee or the statement of the committee?

THE CHAIRMAN. It is the statement of the chairman of the committee simply. Now, I will inquire what organizations and bodies and individuals desire a hearing before this committee, and also upon what subjects, and I will ask the clerk to state what organizations have presented themselves. First I will inquire as to whether any of the State railway or public utilities commissions are represented here.

MR. JOSEPH L. BRISTOW. Mr. Chairman, the National Association of Railway Commissioners will be represented before this hearing by a committee appointed for that purpose.

THE CHAIRMAN. When would that body like to be heard?

MR. BRISTOW. Since the railways, as we infer from the statement made to the House committee last winter and statements made in the press during the summer and fall, have a definite plan by which they state they desire to curtail the authority which is now exercised by the State commissions, we would very much prefer that they present that plan in order that we may know what it is before the commissions appear to discuss them.

SENATOR UNDERWOOD. Mr. Chairman, I notice in the statement of our former colleague that it appears as if there was an effort here to bring a fight between two contending bodies. I hope we can pro-

test against any such effort. Unquestionably the desire of this committee is information, and we are not to be governed by the desire of the railroads or shippers or the State commissions. It is only information that we want in order to work out this problem for the public good, and I hope that we can avoid any combat between special interests in this connection.

Mr. ADAMSON. It would be intolerable if either this committee or the public would tolerate a fight between anybody on this subject. We should recognize, however, the fundamental principle laid down by Blackstone centuries ago, but when you go to legislate you should consider, first, the present law; second, the mischief; and then the remedy; and that being true, it is not necessary to infer that the railroads are the only ones that have any objection to the present system. I think Senator Bristow is partially right. I do not think it is proper to say that the railroads shall take the initiative, but to say that all those who have any suggestions to make about existing defects in the business ought to appear and give us the benefit of their statements.

Mr. BRISTOW. Mr. Chairman, I will state in reply to the suggestions of Senator Underwood and Mr. Adamson that the State commissions are here to serve the pleasure of this committee. We will appear whenever you desire. I simply state what we feel would be the more orderly way for us to proceed. If the committee desires us to proceed in any other way, we will comply, of course, with its desire very cheerfully.

The CHAIRMAN. May I ask, for the record, who the officials of the National Association of Railway Commissioners are?

Mr. BRISTOW. The president of the association is Mr. Max Thelen, of California, who is present, and is a member of the committee selected by the national organization to present certain phases of this question to this committee. There is a first and second vice president. The first vice president is Mr. E. C. Niles, of New Hampshire, who is also a member of that committee, and then there are five other gentlemen who have been selected as members of the committee to represent the association.

The CHAIRMAN. Will you be kind enough to hand in their names?

Mr. BRISTOW. I will be glad to give the names of each member.

The CHAIRMAN. Please give the name and address of the secretary.

Mr. BRISTOW. I will be very glad to do so.

The CHAIRMAN. May I ask, Mr. Bristow, whether the State Railway Association is prepared to go on with its statement at this time?

Mr. BRISTOW. It is not. We could not proceed to-day because we are not prepared to do so.

The CHAIRMAN. How soon would your commission be so prepared?

Mr. BRISTOW. We will endeavor to prepare ourselves when the committee indicates when they desire to hear us, but we would prefer, as I said in my first statement, very much, that the railways, who have been very active in promoting the idea that there shall be some radical changes in the methods as relate to the States and the Nation in regulating the affairs of carriers should present the plan which they have.

Senator CUMMINS. Has your association proposed any change in the present law?

Mr. BRISTOW. We have not.

Senator CUMMINS. You are not prepared to put forward any revision or readjustment of the present system?

Mr. BRISTOW. We are not.

Senator CUMMINS. That is as I understood it.

Mr. ADAMSON. You are here to consider such propositions as may be offered of changes in the system?

Mr. BRISTOW. That is exactly the case.

Mr. ADAMSON. Because you can not reply to them until you hear them?

Mr. BRISTOW. That is exactly our position, Mr. Adamson.

The CHAIRMAN. Are any of the board of trade or chambers of commerce of the country represented here?

Mr. AMOS L. HATHAWAY. Mr. Chairman, I represent the Boston Chamber of Commerce. I gave my card to the clerk and asked that we be put in line for hearing at such time as will meet the convenience of the committee. Does the committee desire any statement of the attitude of the chamber at this time?

The CHAIRMAN. Not at this time.

Senator BRANDEGEE. Would it not be well if each gentleman should state what subject he wants to appear on, if there is any particular subject?

Mr. HATHAWAY. I will be glad to state to the committee, as far as at present advised, the attitude of the Boston Chamber of Commerce is to favor the incorporation of railroads under the Federal law, in the first place, and in second place, that the present system of dual regulation and semicontrol shall be supplanted by a system of Federal regulation and partial control, and that this regulation shall extend to the subject of railway securities, and that the matters of detail, which should be left to the State commissions should be adjusted by Congress and by the Interstate Commerce Commission itself.

The CHAIRMAN. Can you give the names of those who desire to appear on behalf of the Boston Chamber of Commerce?

Mr. HATHAWAY. I can not at the present time. I think the attitude of the chamber is that of listening at the present and being prepared to meet the situation as it develops a little later, but I will keep the committee advised of its definite action.

The CHAIRMAN. Do you hold any official position in connection with the Boston Chamber of Commerce?

Mr. HATHAWAY. I am simply a member of the transportation committee of the chamber and its attorney here for the purpose of these hearings.

The CHAIRMAN. With whom shall communication be had by the clerk of the committee?

Mr. HATHAWAY. I will leave the address with the clerk.

The CHAIRMAN. Are there any others who would like to be heard?

Mr. FREDERICK B. DE BERARD. I appear for the Merchants' Association of New York. We desire to—

The CHAIRMAN. Will you give your name and address?

Mr. DE BERARD. Frederick B. De Berard.

The CHAIRMAN. And what is your address?

Mr. DE BERARD. Woolworth Building, New York City.

The CHAIRMAN. What position do you occupy with reference to that chamber?

Mr. DE BERARD. We desire to oppose governmental ownership and the operation of public utilities. We desire to favor the exclusive control by the Federal Government of the operations of all railroads.

The CHAIRMAN. Are you an officer of that organization?

Mr. DE BERARD. I am the director of research. My duties are to study economic questions and advise the committee upon them, and I have been instructed to appear before this committee as the representative of the association and to present arguments, if opportunity is offered, in support of the two propositions I have stated.

The CHAIRMAN. Can you state now who will be likely to appear before this committee on this subject?

Mr. DE BERARD. I have been delegated to appear for the association in that particular and on matters specifically touching traffic and traffic movements. Probably our traffic manager, Mr. J. C. Lincoln, will likewise appear later.

The CHAIRMAN. Are you prepared to go on now and present your views at the hearing, or will you be shortly?

Mr. DE BERARD. I am prepared now, at the convenience of the committee.

Mr. BARTOL. Mr. Chairman—

The CHAIRMAN. Give your name and address and the organization in whose behalf you appear?

Mr. BARTOL. My name is George E. Bartol, Philadelphia. I represent the organization that is known as the Philadelphia Bourse, which is practically a chamber of commerce. We have some 3,400 or 3,500 members and devote ourselves very largely to the consideration of commercial matters that are of nation-wide character, and not of a purely local character. We have been studying the question of reasonable regulation of railroads, as we call it, for about two years and a half. We have formulated a brief, on what we think is quite a comprehensive plan, which seems to cover virtually the phases that are essential, in our judgment, to a reasonable regulation of the railroads, in the interest of the three parties—the public, the workers, and the owners.

The CHAIRMAN. Who will desire to be heard before the committee as representing your association?

Mr. BARTOL. I have been delegated by the board of directors of the association to present the views of the body whenever the committee is ready to listen to me.

The CHAIRMAN. You will be ready to proceed—

Mr. BARTOL. At any moment.

The CHAIRMAN. At any moment?

Mr. BARTOL. Yes, sir; Mr. Healy has my name and address and knows just how to reach me at any time.

Mr. RIX. Mr. Chairman—

The CHAIRMAN. Please give your name and address.

Mr. RIX. George E. Rix, of Lawrence, Mass. I represent the Lawrence Chamber of Commerce, and associated boards of trade of Essex County, and the American Woolen Co.

The CHAIRMAN. Upon what subjects will your organization desire to be heard?

Mr. RIX. I shall confine myself strictly to traffic.

The CHAIRMAN. And by whom will these organizations be represented?

Mr. RIX. They will be represented by me. I have been authorized to appear for them. My appearance would be in the form of a statement, which I would like to read into the record. It will be comparatively brief.

The CHAIRMAN. Are you prepared to proceed now?

Mr. RIX. Practically so; yes, sir—at any time the committee may desire.

Mr. GARCELON. Mr. Chairman—

The CHAIRMAN. Please give your name and address.

Mr. GARCELON. William F. Garcelon, 608 Sears Building, Boston, Mass., representing the Arkwright Club, which has a membership of about 100 cotton mills of New England. I desire simply now to enter an appearance. I am not certain that we desire to give testimony. If we do, I shall probably present it, but I simply desire, now, to be on the record now and to be in a position to give testimony if we should desire.

The CHAIRMAN. You are not prepared to proceed now?

Mr. GARCELON. No, sir; I am simply entering my appearance now.

Mr. ADAMSON. Mr. Chairman, I understand it is your purpose, when you receive notice from all who desire to appear, that the committee will go into executive session and make something like a calendar, in order to give these gentlemen some idea as to when they may appear, and so as to meet our convenience—

The CHAIRMAN. That is it exactly.

Mr. McCLELLAN. George McK. McClellan, representing the Seattle Chamber of Commerce. We desire to be heard later on the question of the railroad wage controversy.

The CHAIRMAN. The railroad wage controversy?

Mr. McCLELLAN. Yes, sir.

The CHAIRMAN. Are you ready to proceed now?

Mr. McCLELLAN. I shall be ready later in the week.

The CHAIRMAN. Will there be any others who desire to be heard in behalf of that organization?

Mr. McCLELLAN. So far as I am advised, Mr. Chairman, there will be nobody else, unless the chamber shall desire later to appear on other questions.

Mr. HOUSE. Mr. Chairman—

The CHAIRMAN. Please give your name and address.

Mr. HOUSE. Francis Everett House. I am associated with Mr. L. C. Boyle, of Kansas City, Mo., in representing the Commercial Club of Kansas City, Mo. I have been just recently asked to appear in their behalf, and I do not know exactly what their position is. I am quite sure Mr. Boyle will want to appear at some time in behalf of the Commercial Club, and very likely Mr. Wilson, the traffic manager of that club. Mr. Boyle also represents—

The CHAIRMAN. Will you give the full names of the gentlemen?

Mr. HOUSE. Yes, sir. Mr. Boyle also represents some more definite interests which he will want to represent.

Mr. GODLEY. Mr. Chairman—

The CHAIRMAN. Will you give your full name?

Mr. GODLEY. Mr. Philip Godley. I am chairman of the committee on inland transportation of the Philadelphia Board of Trade,

of Philadelphia, Pa. I am authorized by them to present to you the question of Government ownership of public utilities, and am ready for your hearing, sir, whenever you are ready to hear me.

The CHAIRMAN. Will there be any others who will appear on behalf of the organization?

Mr. GODLEY. I think not—not at the present time. The Philadelphia Board of Trade is a part of a joint committee who will, a little later on, present the question of railroad regulation, as a joint committee, the Philadelphia Board of Trade being a part of the joint committee.

Mr. KELLOGG. Mr. Chairman—

The CHAIRMAN. Please give your full name and address.

Mr. KELLOGG. R. S. Kellogg, Chicago, Ill. I desire to enter an appearance at this time simply for the purpose of protecting us in case we wish later to present testimony.

The CHAIRMAN. You are not prepared to proceed now?

Mr. KELLOGG. We are not now. There is a chance we will be later.

The CHAIRMAN. Is there anyone else who will appear on behalf of your organization?

Mr. SIMS. What phase will you discuss?

Mr. KELLOGG. I am not sure we will discuss any. We did not get, until quite recently, the detailed statement of the features of the investigation from the clerk of the committee. The National Lumber Manufacturers' Association represents 12 organizations of lumber manufacturers throughout the United States, and we have not had time, since we got the statement from the committee, to get their views on the question. I can not promise, at this time, that we shall wish to discuss any particular subject, but I wish to protect our opportunity for presenting testimony, in case we should so desire.

Senator BRANDEGEE. You appear in the interest of the association?

Mr. KELLOGG. I beg your pardon.

Senator BRANDEGEE. You appear in the interest of the association?

Mr. KELLOGG. Yes, sir; of the National Lumber Manufacturers' Association. Any notice or request for information may be served upon me as secretary of the organization, and I will see that it is taken care of.

Mr. MARSH. Mr. Chairman—

The CHAIRMAN. Please give your full name and address.

Mr. MARSH. Mr. Benjamin Clark Marsh. I wish to appear in behalf of the Committee on Real Preparedness. Mr. Amos Pinchot, the chairman, will appear. I want to urge Government ownership and operation of railroads, and, first, we should get an honest valuation and reasonable capitalization, and we wish also to point out to the committee the failure of the public regulation of railroads. Mr. Amos Pinchot, the chairman, as I said, will appear here later.

Senator ROBINSON. Will your discussion extend to telegraph and telephone companies?

Mr. MARSH. No, sir.

Senator ROBINSON. It is confined exclusively to railroad?

Mr. MARSH. Yes, sir.

Senator BRANDEGEE. What association did you say it was?

Mr. MARSH. The Committee on Real Preparedness, of which Mr. Amos Pinchot is chairman. The committee represents some thirty-two States.

Senator ROBINSON. You represent an organization in the various States?

Mr. MARSH. Yes, sir.

Senator ROBINSON. What is the name of the organization?

Mr. MARSH. The Committee on Real Preparedness.

The CHAIRMAN. As I understand it, you will be ready to proceed—

Mr. MARSH (interposing). To-morrow or Wednesday, if convenient for the committee.

The CHAIRMAN. Are there any other organizations represented here?

Mr. POST. Mr. George A. Post, president of the Railway Business Association. We would desire to register our application to be accorded a hearing, our theme being the general regulatory scheme, to be laid before you, with the results of collaboration by our organization with other trade bodies throughout the country. I can not, at this moment, tell who the gentlemen will be who will accompany me, but would ask that it be not earlier than the 15th of December, if that will suit the convenience of the committee.

The CHAIRMAN. Are there any other organizations represented here—boards of trade or chambers of commerce?

Mr. S. H. COWAN. I am Mr. Cowan, of Texas. In behalf of the character of organizations which you are calling at this time, I wish to enter my appearance and the appearance of Mr. G. S. Maxwell, of Dallas, Tex., and a committee, the names of which I am not at this moment able to give you, representing the Industrial Traffic League of the State of Texas, who will desire to appear before this committee to meet any contention with respect to the matter of abolishing the railroad commissions of that State or any other, or the taking over to Federal control of the making of rates and all such cognate questions as might arise in that connection.

They have put themselves upon record with respect to the matters which I have mentioned. I may safely say, likewise, that they are opposed to Government ownership of railroads at the present time and under present conditions and unless some further absolute necessity shall arise and until somebody knows more about it than we think anybody knows now.

While I am on my feet I will say that I represent, as attorney, the National Live-Stock Shippers' Protective League, an organization which we think is in agreement with us on the subject of preparedness, but we can tell about what we want to be prepared for. That brings together all of the live-stock organizations of the various States, known as the State Live-Stock Associations, by various names. All of the live-stock commission men of different markets comprising the live-stock exchanges at each market, which in turn is composed of the membership of those engaged in business at our live-stock markets. Also the American Live-Stock Association, with its headquarters at Denver, Colo., and the National Wool Growers' Association, with its headquarters at Salt Lake City.

I likewise represent the Texas Live-stock Shippers' Protective League, and, indirectly, through the American National Live-Stock Association, the National Live-Stock Shippers' Protective League, the Cattle Raisers' Association of Texas, which also desires to appear

separately—that is, not separately, but also to appear—as will the live-stock associations of each one of the States, as I believe, the matter being of very great importance in this particular line of business, because we move the largest part of our live stock to market upon the State rates, although it is frequently an interstate movement, for example, like the movement from Iowa to South Omaha, or from Missouri to Kansas City, if they go on the Kansas City line, or from the State of Kansas to Kansas City, Mo.

There are also a large number of packing houses, greater or less in extent, in the various States where live stock is produced whose business depends upon the State rates made to those points to meet the exigencies of the situation of the people who raise the grain, who raise the meat to feed the people in Washington as well as in Europe. And I think they will all desire to appear, but I am unable to state their names. I have given you some of the names of the parties who will appear here on behalf of those organizations, and will also mention the following:

Mr. Ike T. Pryor, San Antonio, Tex., president of the National Live-Stock Shippers' Protective League.

Mr. T. W. Tomlinson, of Denver, Colo., secretary of the National Live-Stock Association.

Dr. S. W. McClure, of Salt Lake City, secretary of the National Wool Growers' Association.

Mr. J. H. Mercer, of Topeka, Kans., secretary of the Kansas Live-Stock Association.

Mr. A. Sykes, of Ida Grove, Iowa, representing the Corn Belt Meat Producers' Association.

Mr. Edward F. Keefer, of Chicago, secretary of the National Live-stock Shippers' Protective League.

Mr. Graddy Cary, of Louisville, Ky., representing the Southern Cattlemen's organization.

Mr. C. B. Lee, of Jefferson City, Mo., the traffic expert of the Missouri Railroad Commission or Public Utilities Commission. I mention his name because he is a member of the executive committee of the organization for which I am attorney.

Also Mr. J. H. Henderson, of Des Moines, Iowa, the commerce counsel of the State of Iowa, who likewise is a member of the executive committee of the National Live-Stock Shippers' Protective League, and its vice president.

Judge A. E. Helm, of Topeka, Kans., who is likewise a member of the committee, and is the attorney for the Corporation Commission or Public Utilities Commission of the State of Kansas.

With the permission of the committee I will read a brief statement which I made, apprehending that you would call for such a declaration with respect to who would want to appear, and the time they would like to have, after stating, as I have orally, the names of the organizations.

The purpose of appearing in this hearing is, first, in opposition to the proposal to centralize in the Federal Government the regulation of rates on State traffic and cognate questions. We declare that under the Constitution the States have exclusive right to regulate the intrastate rates, the question whether the State has violated the commerce clause is for the judicial determination; that while the

State may be prohibited from that originally the Interstate Commerce Commission can not, on that account, be given power over the State rates.

We think the railroads should define their position and submit their views first, and that any other course would be unfair.

On that subject I wish to say that it is a matter of common knowledge, which, of course, this committee does not ignore, that the railroads are behind the movement to abolish the State commissions. The purpose is perfectly plain, and no one need hoodwink himself about that. The State railroad commissions regulate to-day the rates in this country. If they are abolished I do not know who will regulate the rates in this country. I do not say that out of criticism to the Interstate Commerce Commission, but I say it because of the difficulty that arises when all that burden is placed upon a commission, that they are not now prepared to do it.

The CHAIRMAN. Mr. Cowan, we would be very glad to hear you on that subject later, but we are now simply marshaling the witnesses and the subjects upon which they are disposed to appear.

Mr. COWAN. Of course, Mr. Chairman, I desire to conform exactly to your ruling in the particular mentioned; and the purpose in stating what I did was that we may ask for considerable time of this committee, and we have to travel a long ways when we come from out there, where we are engaged in business, and we think we ought to know what we come for, and therefore this committee ought to require of the railroads that they define the proposition that they have to make and that they expect to submit to the public in order that we may answer them. We are not here to propose.

Mr. ADAMSON. Are you not about to waste your ammunition in defense of a proposition before anybody has assailed it? Let the plaintiff make out his case before you defend.

Mr. COWAN. Mr. Congressman, you are quite well aware of the fact that I know when the other fellow is going to assail me. We will try to be prepared to present a number of witnesses who shall be able, without any extraordinary expense, to be here beginning December 4.

The CHAIRMAN. I wish to state, Mr. Cowan, that there is no disposition to limit you at all in your statement as to what questions you intend to cover. All I wish to guard against was any general elaboration.

Mr. COWAN. I do not want to do that. I expect to do that later. I probably will tire the committee then.

On December 6 the Interstate Commerce Commission will reopen the Shreveport case. There will be more of that later. A number of persons outside of the State of Texas will be here to participate in this argument on the 6th of December; some will come a day or two in advance. And the parties at interest in that are, directly, the whole State of Texas, and nearly directly, but I might say indirectly, the other States which desire to preserve their State regulations; and a number of them may be present at that time, and I therefore suggest that December 4 we will be ready to begin if it suits the convenience of the committee, or after the argument, which is the 6th and 7th of December, to proceed on December 8 or at such later date as may suit the convenience of the committee.

On account of the great distance we must come and the necessity for people to arrange their business affairs to make such a trip, we would desire to ask 10 days' notice of the date on which we are expected to appear. Of course, not everyone can be here at the same date, but we could so distribute it as to interfere the least possible with the business of those who would desire to appear.

As I have stated, these individual associations, represented here by me—and I came here, I may say, for the purpose of undertaking to arrange some detail in order that I might notify them or secure notice from the committee to them of the dates on which the hearings will be had—a member of these organizations will desire to go further into detail, doubtless, than anything I have suggested here, but not further than the subjects which the chairman has indicated might be considered here, which, I believe, include nearly everything except the war, and partially that, so far as transportation to European countries is concerned.

That is not by way of criticism, Mr. Chairman.

We do have some proposals to make respecting the matters of service, which seems a matter of vast importance to me when it is said that 150,000 cars are tied up, not doing anything. People are anxious to ship and can not do so.

The matter with respect to the internal working affairs of the Interstate Commerce Commission is a subject that somewhere or other should be taken up. I think the commissioners desire that themselves. I have been so told by some of them. As it is to-day, I will be permitted to inform this committee, although probably they already know it themselves as well as I, the Interstate Commerce Commission has so much before it that it is perfectly impossible for it to read and examine the records of the evidence taken. We all know it is difficult to decide a thing correctly without at least knowing the record. That being so, it is necessary for them to employ, as they do, examiners for the purpose of taking the testimony and making a report to the committee. As a practical matter that will always be necessary, and a matter of great and growing importance.

Mr. ADAMSON. On that phase of the case you will appear with the plaintiff, shall you not?

Mr. COWAN. I will be in the position of plaintiff; yes, sir. Yes, I shall be very glad to so appear, and as a friend of the court.

The Interstate Commerce Commission has the power, doubtless—I believe the members of the commission think they have the power, although they somewhat hesitate to use it for various reasons I need not enumerate—but I believe they would like to have the power conferred upon them and the duty imposed to employ at a salary which will command the services of the best talent on the subject which they can get, to hear and make a report on these cases, just as the masters in chancery do in the United States district courts and in courts of equity. All important cases in the original trial, as far as I know, involving such things as this, have been had before masters in chancery, selected by our courts as men capable of handling it, and their report is submitted to each side, and each side has the chance to look at it and file objections before the master as to his findings of fact and law, and likewise to carry them to the court.

On behalf of the shipping public and persons who must come before the Interstate Commerce Commission, and on behalf of the

Interstate Commerce Commission, though I am not so directly authorized to speak, I wish to impress upon this committee the importance, if this is the committee before which it should come, of some law along that line that will meet the ends of justice and speed the cause. So often it happens that a man could not possibly get relief from the Interstate Commerce Commission until the subject matter is given, and if you will investigate it, gentlemen of the committee, you will find I am correct. The commission is not to blame for it. It is simply the misfortune of the situation. The railroads are not to blame for it. I think they are just as anxious to have this sort of law as the shippers are. I have been so told by a number of their attorneys.

We make the further suggestion that at least the fundamental propositions that are to be presented to this committee be fairly and definitely outlined by us, in order that those who desire to controvert it may know just what they are controverting; and it will save a great many unbaked expressions before this committee, if we may go by the experience of all of us—I have put a good deal of dough before some of the congressional committees myself, and I am not guiltless, by any means; but, at least, a man ought to study out thoroughly just what he has to present and present it logically to save your time and in order that persons may get something definite in a shape that is tangible.

Mr. ADAMSON. Do you not think you ought to divide your appearances and first give us your views on the changes that ought to be made in the commission, because it seems to me that those for whom you propose changes ought to open the case and be heard first?

Mr. COWAN. I think that of burning importance to do, and I could point out why.

Mr. ADAMSON. I do not mean now, but I mean when you appear?

Mr. COWAN. Yes.

Mr. ADAMSON. A part of your case is against those for whom you demand reforms, and a part is against some things that you do not consider a reform.

Mr. COWAN. Yes; the two not being connected at all, but being subject matters for inquiry by this committee. That any amendment of the law or any amendment which is proposed should be specifically presented by a complete bill for that purpose. I think that is a matter of great importance to this committee, as well as to those of us who have to appear to further the bill or to speak against it or to amend it. That the method of grouping the subjects—

Mr. ADAMSON (interposing). He may be out of order, but he is talking the right doctrine.

Mr. COWAN. I do not think I am out of order in this case.

Mr. ADAMSON. I did not say you were. I said you might be out of order, but it is the right doctrine.

Mr. COWAN. That any method of grouping subjects for hearing before the committee be so done that it will not require repeated attendance of witnesses. Those are matters of more importance than might be thought sometimes, because we have to come so far and to prepare ourselves to come, and it is expensive; and so arrange it that a person desiring to present several matters to the committee may be able to do so at one sitting. We think that the proponents

of the most important matters, involving material changes in laws and methods—for example, Federal control of rates, and Federal incorporation, and the like—should be required to file briefs, to be printed, which the opposition shall have time and opportunity to answer, all to be printed at the expense of the Government. [Laughter.]

Mr. COWAN. That is laughable, but it is very serious, because the making of money, to any of you gentlemen who have tried it or depended upon your living for it being done, to get all these things done that you outline involves, first, making the man believe that you want to get money from that you ought to do it, and when it comes to a large printing bill he at once says, "The Government ought to do it," and that is the reason I make that suggestion; that after we are through with a given subject, or at such time as the committee shall decide that it ought to be done, that the parties brief the case so that it will come within compass, so that anybody then can answer it, if the Government prints it and it goes out like the hearings do—the printed records of the hearings—then a person who does not come here may file as good a brief in answer to it as if he were here. The matter is of such vast importance that I have made these suggestions to the committee, and I thank you for your consideration.

The CHAIRMAN. Mr. Cowan, you have referred to the defects in the existing system and suggested remedies. Is your association ready to proceed upon that line of the investigation at an early date?

Mr. COWAN. On December 4 we will be, as I understand. A great many will be here on account of the argument of the Shreveport case, and I say that more because I will be here at that time.

Mr. HEINEMANN. Mr. Chairman, my name is C. B. Heinemann, secretary of the National Live Stock Exchange. I merely want to enter an appearance.

The CHAIRMAN. What is your residence?

Mr. HEINEMANN. Chicago, Ill., Union Stock Yards. I merely want to enter an appearance in order that we may be permitted to put in such testimony as our executive committee may desire. I have no remarks to make as to the position we will take, as that is a matter for our executive committee's action.

The CHAIRMAN. You are not ready to state now the subjects that you propose to consider or the names of the persons who will represent them?

Mr. HEINEMANN. No, I am not; but there may be a possibility that we will not care to enter any testimony whatever, sir.

Mr. TOWNSEND. Mr. Chairman, my name is J. H. Townsend, of Memphis, Tenn., representing the Southern Hardware Traffic Association. We desire to have several witnesses appear on the question of the reorganization of the Interstate Commerce Commission, and as to the regulation of ocean traffic. That committee is not ready to appear yet, but will be ready about the middle of December.

The CHAIRMAN. Have you the names of the committee?

Mr. TOWNSEND. The chairman of the committee is Mr. James E. Starke, of Memphis, Tenn.; the other members of the committee are Mr. W. B. Burke, of Charleston, Miss.; Mr. Frank F. Fee, of Little Rock, Ark.; and Mr. Smith Milton, of Louisville, Ky.

**Mr. BUTLER.** Mr. Chairman and gentlemen, my name is Rush C. Butler, of Cassidy, Butler, Lamb & Foster, of Chicago. I have been asked to appear before the committee in the name of the Chicago Association of Commerce. The association now has under consideration, and has had for some time past, the views, or rather the formulation of its views, so that they may properly be expressed to this committee in a helpful manner. I believe that the association will be prepared to present its witnesses within the next two or three weeks at the pleasure of your committee.

**The CHAIRMAN.** Is there any other organization which desires to be heard?

**Mr. LAMB.** Mr. Chairman, my name is William E. Lamb, of Chicago, and I desire to enter the appearance of the California Fruit Growers' Exchange of Los Angeles, Cal., an organization of growers of citrus fruits, and, at such time as it will meet the views of the committee, we desire to appear and to present some views relating to the various suggested changes in the law. I doubt that we will care to be heard upon the questions involving Government ownership, but merely on the questions relating to the proposed change in the law.

**Mr. MYRICK.** Mr. Chairman, my name is N. Sumner Myrick, and my address is No. 602 Barristers Hall, Boston, Mass., and I am a member of the Boston bar. I represent at this time the so-called "Amster Committee" of the Rock Island stockholders and certain other large investors in railroad securities. We desire to be heard particularly upon the question of governmental control of the issuance of securities, the appointment of receivers, and cognate subjects, and we will be prepared to be heard at some future time but not at the present time.

**The CHAIRMAN.** Is there any other organization which desires to be heard? I forgot to inquire whether the Interstate Commerce Commission is represented here by anybody.

**Senator BRISTOW.** Would it be in order for me to give now the names of the other members of the committee of the National Association of Railway Commissioners that will appear before the committee?

**The CHAIRMAN.** Certainly.

**Senator BRISTOW.** In addition to Mr. Thelen, the chairman of the committee, and Mr. Niles, the vice president, there are also Mr. Charles E. Elmquist, second vice president, who is president of the Railroad and Warehouse Commission of Minnesota, whose address is St. Paul, Minn.; Mr. Owen P. Thompson, a member of the Public Utilities Commission of Illinois, whose address is Jacksonville, Ill.; Mr. Charles Murphey Candler, president of the Railroad Commission of Georgia, Atlanta, Ga.; Mr. Laurence B. Finn, chairman of the Railroad Commission of Kentucky, Franklin, Ky.; Mr. Carl D. Jackson, a railroad commissioner of the State of Wisconsin, whose address is Madison, Wis.; and Mr. Joseph L. Bristow, of Kansas. Those will be the representatives.

**Mr. THELEN.** Mr. Chairman and gentlemen, my name is Max Thelen. I am president of the Railroad Commission of California. I desire to enter my appearance on behalf of the Railroad Commission of California. When those who propose changes in the existing

order of things have presented their case we shall be very glad to make some suggestions to the committee in connection with the committee which represents the National Association of Railway Commissioners. I desire also to draw your attention to the fact that there are here a number of State commissioners from other State commissions who desire to enter their appearance in connection with the committee of the National Association of Railway Commissioners, and if this is a proper time I might suggest that they be given the opportunity to enter their appearances.

The CHAIRMAN. Yes. It was my intention to call for them. Have we got through with the boards of trade and the chambers of commerce and other organizations?

(No response.)

The CHAIRMAN. If so, I will inquire, first, whether there is any representative of the Interstate Commerce Commission here?

(No response.)

The CHAIRMAN. Now, I will inquire whether there are any representatives of the various State railway commissions here?

Mr. LOVE. Mr. Chairman, my name is J. E. Love, chairman of the Oklahoma Corporation Commission, and we will consult with representatives and the committee and work in unison with the committee of the national association.

The CHAIRMAN. When would you like to be heard?

Mr. LOVE. Any time in December.

The CHAIRMAN. And upon what subjects?

Mr. LOVE. Upon the subject of the States holding the control that they have now.

The CHAIRMAN. I will ask whether there are any gentlemen here who have received invitations from the committee to present their views, other than those who are connected with such organizations as I have referred to—publicists and economists?

Senator ROBINSON. Had we not better inquire about the State railway commissioners first?

The CHAIRMAN. Are there any other State railway commissioners here who would like to be represented?

Mr. YATES of Illinois. I am a State railroad commissioner of Illinois, but my commission is already represented upon the executive committee. I think there are a number of other State railroad commissioners in attendance in that way, who will not be heard except through the committee of the National Association of Railroad Commissioners.

The CHAIRMAN. We would like to know the names of those who wish to be heard independently.

Mr. HENDERSON. Scott Z. Henderson, of Olympia, Wash., representing the Public Service Commission of Washington. We do not know when we will desire to be heard or whether we will have any particular things to draw to the attention of the committee at all, but we would like to have the opportunity, if the investigation develops in such a manner as we could be of service to this committee, of putting our traffic men before you to explain the situation in the State of Washington.

Senator BRISTOW. I have been requested to state that the State Railroad Commissioners would like to be heard on a particular matter in which some of them are interested—the subject matter of

which I am not able to state just now—on the 10th and 11th of December, if that will be convenient.

The CHAIRMAN. You are not able to state the subject matter?

Senator BRISTOW. I am not at this time, but will at a later date.

Senator BRANDEGEE. Let me ask you, Senator Bristow: As I understand it, the State railroad commissioners are all members of the National Association of Railroad Commissioners, are they?

Senator BRISTOW. They are; yes, sir.

Senator BRANDEGEE. Has the National Association of Railroad Commissioners appointed a committee to appear here before this committee?

Senator BRISTOW. It has.

Senator BRANDEGEE. Do I understand that in addition to that the separate State commissioners want to appear also, or may want to appear also, on different phases of the matter?

Senator BRISTOW. There are some State commissions that desire to be heard upon matters that have not been placed directly in charge of the committee of the national association, and they will ask to be heard on certain phases of the questions that are involved here that the association as a whole does not deal with.

The CHAIRMAN. And you would like the opportunity to be heard on the 9th or 10th?

Senator BRISTOW. On the 10th and 11th of December.

The CHAIRMAN. The 10th and 11th?

Senator BRISTOW. Yes. There are some parties representing the States that want to be heard at that time.

The CHAIRMAN. Would you kindly request them to designate the subjects upon which they wish to be heard at as early a date as possible?

Senator BRISTOW. I will be very glad to do that.

The CHAIRMAN. And also please give the names to the clerk.

Senator BRISTOW. I will do so, yes; and Mr. Elmquist, of Minnesota, has just suggested that another committee of the National Association of Car Service desires to be heard, and will request the committee to state the date when it would be most convenient for it to be heard, after December 15. That is a committee that is appointed especially to deal with the congestion of commerce now, due to the car shortage, and they are making an investigation, and will want to appear before the committee after that date.

Mr. COWAN. The Railroad Commission of Texas will desire to be heard, but I do not know which one of the commissioners may be here, and I might suggest the time as about December 8. I will put in that request. One of the commissioners will be here then, and I suppose that is the time they would like to be heard. Likewise, the attorney general of Texas will want to be heard before this committee, and he will be here at that time. and perhaps that date will suit both of them.

The CHAIRMAN. I asked whether any of those who have been invited by the committee to appear, are here?

Senator CUMMINS. Mr. Chairman, are there any railway companies here that desire to be heard?

The CHAIRMAN. I was going to inquire about that. I was going to inquire, first, for the publicists and the economists who have been

asked, and then for the attorneys general of the various States, and then for the railway companies.

Senator CUMMINS. The railway companies are interested slightly.

The CHAIRMAN. Yes.

Prof. COMMONS. John R. Commons. I was invited to appear here.

The CHAIRMAN. When will it be convenient for you to appear, Professor?

Prof. COMMONS. Any time within the next two weeks.

The CHAIRMAN. Are you ready now?

Prof. COMMONS. Scarcely. I would rather have a few days, if convenient.

Senator BRANDEGEE. Is there any particular subject on which you wish to be heard, or on all phases of the matter?

Prof. COMMONS. Principally on the labor end.

The CHAIRMAN. Are the executives represented here, and if so, by whom?

Mr. THOM. Mr. Chairman and gentlemen, the railroads' executives are represented by a committee of which I am counsel.

#### **STATEMENT OF MR. ALFRED P. THOM, COUNSEL, RAILROAD EXECUTIVES' COMMITTEE, WASHINGTON, D. C.**

The CHAIRMAN. Please state your name and address.

My name is Alfred P. Thom; my address is Washington, D. C. The committee of railroad executives is as follows:

Mr. B. F. Bush, of the Missouri Pacific; A. J. Earling, of the Chicago, Milwaukee & St. Paul; Howard Elliott, of the New York, New Haven & Hartford; W. G. Harahan, president Seaboard Air Line; Hale Holden, president Chicago, Burlington & Quincy; Mr. L. F. Loree, Delaware & Hudson; Mr. R. S. Lovett, Union Pacific; Mr. C. H. Markham, Illinois Central; Mr. Samuel Rea, of the Pennsylvania Railroad; A. H. Smith, of the New York Central; Mr. F. D. Underwood, of the Erie; Mr. H. Walters, of the Atlantic Coast Line; and Mr. Daniel Willard, of the Baltimore & Ohio Railroad.

Of that committee Mr. Frank Trumbull is chairman and Mr. Francis H. Sisson is assistant to the chairman. Any communications to that committee from this committee may be addressed either to Mr. Frank Trumbull, at 61 Broadway, New York, who is chairman, as I have stated, or if it is desired they may more quickly reach me in Washington.

We will be prepared to present our views during the course of this investigation. We have formulated our views in respect to many of the subjects which will be considered. There are others which have come recently into the matter with respect to which we have not. We have understood that this is an investigation proposed by the President and ordered by Congress to consider the question of transportation from the standpoint of the public. We feel it incumbent upon us to keep our minds open as to what we shall ultimately propose for any reasons that may be advanced by the thought of the country in respect to the general subject, and even though we may have our own convictions at the moment as to what we shall propose, we should like to consider the suggestions which may be made by economists and financiers relating to the

credit of the carriers and to other matters involving the philosophy of regulation, so that we may be able to review any preconception that we may have in respect to this matter.

We therefore hope to have the light of those representatives of the public on the general philosophy of regulations to guide us in what we shall ultimately propose. We shall be ready to appear at the order of the joint committee and to meet its convenience, but would like to have the opportunity of presenting our views in the light of what may be developed by those gentlemen who appear, as I understand it, in the public interest, and not as the representatives of any particular body.

Mr. ADAMSON. Mr. Thom, you are already prepared to state the difficulties which you encounter and suggest the evils from which you suffer; you are ready to go that far, are you not?

Mr. THOM. I think we know pretty well what we would like to do, but we would like to present our case somewhat consecutively, of course.

Mr. ADAMSON. Do you not think it would aid those economists if they first heard the suggestion of the troubles which you labor under in presenting their views with respect to remedies?

Mr. THOM. I do not think so. I think we ought to have first the views of the disinterested public on the subject of the general philosophy of regulation. That is my hope, because we think that whatever we say in respect to the matter—

Mr. ADAMSON. What other branch of the disinterested public has expressed any great objection to the system, or trouble about existing conditions besides the carriers?

Mr. THOM. I do not understand that this committee is considering the matter merely from the standpoint of complaint.

Mr. ADAMSON. I know.

Mr. THOM. I understand they are considering it entirely from the standpoint of a study of the whole situation in the public interest.

Mr. ADAMSON. When great reforms are suggested, though, it is expected that those who understand the situation and have felt the pinching of existing conditions will first start to enlighten the committee on the subject.

Mr. THOM. I quite agree with the suggestion that has been made here by some of the gentlemen, that where there was any affirmative suggestion made there ought to be an opportunity afforded those who may be interested in the subject either to approve or disapprove or criticize the suggestions that are made. I fully agree with the propriety of that position. My own feeling would be that before we go into the subject at all from the standpoint of any person interested in the matter, that we hear those gentlemen who are able to instruct us in respect to their own independent study of the system of regulation.

Senator CUMMINS. Who are they?

Mr. THOM. Economists, I think. I think they are men who have given special study to this matter from the philosophic and fundamental standpoint.

Senator ROBINSON. There seems to be only one of them present, and he is not ready to go on.

Mr. THOM. I understand that this committee has invited a large number of them and that a great many have accepted. You were not in the room to-day when that matter was suggested.

Mr. ADAMSON. Mr. Thom, my recollection is that when our committee was considering the propriety of reporting joint resolution No. 60—that is the House committee—that you very ably and intelligently presented an outline of a plan which you desired to present in behalf of the railroads.

Mr. THOM. Yes.

Mr. ADAMSON. Nobody else has stated that he is ready to present any plan, and it seems to me if you would go ahead, as you stated to our committee at that time, and state your objections to the present system—and I agree with many of them in your statement, some of them were well taken—and show us what objections or difficulties there are and what your plan of relief is, that you will not only prepare the mind of the committee to study the case, but you will prepare other witnesses and experts and give them an opportunity to talk about what your suggestions are. They have no suggestions to propose and you have.

Mr. THOM. I understand that some of them have, but I understand, Judge Adamson, what you have now alluded to as having been partially outlined by me before your Committee on Interstate and Foreign Commerce of the House, is what I mentioned a moment ago as things we feel at the present time—things that we ought to advocate in the public interest.

Now, I feel—and that is the feeling of our committee—that we ought to review all those subjects in the light of any comment of a fundamental nature from the thinkers of the country who are disinterested. It may be that we will see no reason for modifying any one of them.

Mr. ADAMSON. I think the thinkers of the country ought to have the benefit of your suggestions in order that we may examine them about it.

Mr. THOM. My preference would be what I have stated, to have these gentlemen discuss the general question of the philosophy of regulation as they see it from the public standpoint.

Senator CUMMINS. What do you mean by "the philosophy of regulation," Mr. Thom? Just tell us exactly what you mean by that.

Mr. THOM. There are a great many points involving the philosophy of regulation. One is whether or not there should be free trade between the States, or whether there should be barriers placed between the States.

Senator CUMMINS. That is really the essential matter, is it not?

Mr. THOM. That is a large question. We think we can get a good deal of light on that subject from those gentlemen. There are other matters, but I shall not go further into the question of philosophy. I would say that one of the great questions which I suppose this committee and the country is interested in is whether the present system of regulation adequately measures up to the needs of the public, the credit which these carriers ought to have.

Senator CUMMINS. I suppose, if you will allow me to suggest, that what you are really afraid of is that if the railroads propose a plan that it will be attended with some prejudice in the minds of the people because the railroads have proposed it. Is that the point in your mind?

Mr. THOM. That is largely what is in my mind, Senator. I consider this—

Senator CUMMINS. That would not be in the minds of the committee, I am sure.

Mr. THOM. I hope not.

Mr. ADAMSON. I think you are mistaken about that any way. I think that the people of this country are proud of the railroad system, and not one of them would wish to see it broken down. [Applause.] At least this committee would not. I think you had better just go ahead with your remarks and let us consider them.

Mr. THOM. I wish to say to the committee that we fully appreciate two situations; one is that there are some gentlemen who are likely to oppose anything that has a railroad origin. I do not believe that is the disposition of the committee. Another is—and it is a guiding principle for us in any matter which we propose—to attempt to measure it ourselves and to ask the committee to measure it by the public interest alone.

Senator CUMMINS. That is the standpoint, of course, that everybody ought to accept.

Mr. THOM. And which we wish to accept.

Mr. ADAMSON. That is right, but you ought to know more about it than anybody else.

Senator CUMMINS. But in view of the propaganda, in view of the literature that I think has been circulated throughout the country, the plan of Federal incorporation and the enlargement of Federal control is bound to be imputed to the railroads. You can do nothing that will relieve, if you please, the paternity of the authorship of that suggestion, whether it is wise or unwise.

Mr. THOM. Yes, Senator; but our desire is this—

The CHAIRMAN. I wish to say, if you will permit me, that individually I have been identified with the agitation for the national incorporation of railways for some time—for some 10 or 12 years—and have discussed the matter frequently in the Senate of the United States and in the Senate Committee on Interstate Commerce. During that time the action of Congress was regarded as conservative and the national incorporation of railways was then opposed by the railways of the country instead of advocated by them, and had little support in the Interstate Commerce Committee. As far as I am concerned my view was an independent one and was urged against the controlling sentiment of the Interstate Commerce Committee of which I was a member. I regarded national incorporation of railroads as of first importance in the public interests.

Senator CUMMINS. A good many bills for Federal incorporation have been introduced.

Mr. HAMILTON. As I understand you, Mr. Thom, you are simply suggesting a method of procedure which is, in effect, that these gentlemen shall appear before this committee, and out of what they say they may develop a consensus of views on certain subjects which may be accepted—that is, the views of those gentlemen and the views of the people to a large extent—and that thereupon you think it would be a proper method of procedure for you gentlemen representing the railroads of the country to take those views on which these various witnesses have agreed and comment on them, agreeing to some and criticizing some and endeavoring thereby to reach some practical conclusion. It strikes me that that is a reasonable method of procedure.

Mr. THOM. There is one other matter that I ought to speak of. I hope I shall always be recognized, in appearing before committees of Congress, as sincerely frank in any statements I make. Now, here is a view that is actuating us in this matter at the present time. We understand that this investigation has been proposed by the President of the United States in the public interests, to be approached and to be conducted from that standpoint alone. We understand that Congress has indorsed that policy by adopting this resolution, and we are exceedingly anxious that the form which the proceedings shall take will not indicate a departure from that policy.

We therefore seek to avoid, as far as it is proper to avoid, the attitude of reducing this investigation to a plaintiff on the one side and a defendant on the other, or defendants on the other. We do not desire to be placed in the position of plaintiffs in this investigation. With the position of plaintiffs goes a certain responsibility always for a cause, and we desire simply to come in as part of the public, putting our views frankly and without reservation before the committee and the country, but doing it as a part of the general public, doing it in the way that this committee shall consider most useful to it in its deliberations; in a way that will best promote the elucidation and development of the subject but still doing it as part of the public and not as a complainant before this committee.

Mr. SIMS. May I ask you a question?

Mr. THOM. Certainly.

Mr. SIMS. You have been delivering public addresses over the country at different places. I have had the pleasure of reading one of them—I believe one delivered at Atlantic City—in which you claimed to represent or to state the views of what we would call the railroad interests, laying down specific plans and specific legislation which you think is in the interest of the public, and have not, as I see it, been otherwise than frank in your public addresses, so I can not see why it should make any difference. You have taken the public into your confidence and addressed them on the subject, and we only represent the public.

Mr. THOM. Now, gentlemen—

Senator ROBINSON. May I make a suggestion, Mr. Chairman? Mr. Thom has frankly stated the order in which he would like to have the investigation conducted, and has very frankly stated his reasons for it, and the committee will be compelled to adopt its own method of procedure at last. I therefore suggest, unless there is some one else here who desires to give in his name as desiring to be heard, that the committee now proceed to determine the order, and that we proceed to an executive session.

Senator CUMMINS. I would like to ask Mr. Thom one question.

Mr. SIMS. Mr. Thom started to make a statement when he was interrupted.

Mr. THOM. I want to make one other statement before you ask me that question. Having placed before you the views which have controlled us, in what I have said, I wish merely to state that notwithstanding that—and of course you realize that we shall be—but I want it to be understood that we are in the hands of the committee.

Mr. ADAMSON. I know you are always frank, and I am. I am familiar with some of the positions you have taken as you have been very often before my committee, but I think you are mistaken in

assuming that in the minds of the public there may be some prejudice in calling you as a witness. You are peculiarly situated. Your railroad companies know more about the matter than anybody else. It is generally known throughout the country that the President delivered his message to Congress because it was represented to him that the railroads were suffering and needed some remedial legislation. That is understood everywhere. You can not conceal it. When the matter came before our committee we did not understand the purpose of it and called you as a witness, and you made a very lucid, clear statement, stating how the matter had been prepared and how long the committees had worked, and you said you were ready at any time to be heard before the committee, and wanted to show the people all of these conditions. Based upon your testimony our committee reported that resolution to the House and it was passed. Now all that is proposed to do is that we call you as a witness, and nobody is going to discredit you because you are a railroad lawyer. Most of us would like to be ourselves and have your salary—a great many people in the country would. There is nothing discreditable in that at all, and I think you are mistaken in thinking that there is any opprobrium attached to it by the people. We had just as well be candid and frank: The people want to know what the trouble is, and if you state any real tangible troubles the people are going to be willing to correct them—I know this committee will hear you with a great real of pleasure.

Mr. THOM. Gentlemen, I have stated to you very frankly the difficulties that we wish to obviate in the method of proceeding. It is for you to determine whether or not that is the proper method of procedure, and I abate nothing of what I said to your committee, Judge Adamson, in respect to all the matters that were there presented.

Senator CUMMINS. Now, as to my question. I agree with what Mr. Adamson has said, that there can be no prejudice as to the first appearance on this question. It has been mooted a long time by a great many people. Do you know of anyone who is not connected with either side of the controversy who is prepared to discuss Federal incorporation of railroads, both from the practical and the legal standpoint?

Mr. THOM. I have assumed——

Senator CUMMINS. I mean aside from yourself.

Mr. THOM. I have assumed that there are a good many who are ready to do that.

Senator CUMMINS. Who are they?

Mr. THOM. I should think that Prof. Hadley, of Yale, that Prof. Ripley, of Harvard, that Mr. Van Hise, of the University of Wisconsin, and a dozen more gentlemen of that sort of standing are, or shortly will be, here. I do not know from them, but I assume that from the fact that they have been invited and have accepted the invitation.

Senator CUMMINS. They may be, and undoubtedly are, familiar with what you call the general philosophy of railway regulation, but I do not know—and I should be glad to know if it be true—that they have prepared themselves with specific measures for Federal incorporation.

MR. THOM. I do not know about specific measures. I assume not.

Senator CUMMINS. From not only the practical but the legal standpoint. Are any of those gentlemen lawyers?

MR. THOM. I do not know, sir. They are economists and publicists, however.

Senator CUMMINS. They are very eminent economists and publicists. I did not know that either of them was a lawyer.

MR. THOM. I have never heard that they were, nor do I suppose they would be here with any specific measures to propose.

Senator CUMMINS. I think the most interesting part of the whole controversy will gather around the legal questions that are involved. I think you will agree with me as to that.

MR. THOM. Gentlemen, you have heard my statement. We submit the matter to the discretion of the committee.

The CHAIRMAN. Before putting the question on the motion of Senator Robinson, I will ask whether there are any others here who wish to be heard.

MR. F. W. LEHMANN. Mr. Chairman, your committee sent out notices to the telephone and telegraph companies as well as to the railroad companies, and on behalf of the American Telephone & Telegraph Co. I wish to say that they are preparing material to meet the question you suggest as to the propriety of the relations which should exist between these great utilities and the public itself, particularly whether those relations should be of control or of ownership, and we hope with your permission to present to you such facts as we can gather from the experience of the companies of this country, and in other countries where systems different from ours prevail, testimony as nearly as may be, from men who have personal knowledge or personal observation of the facts to which they testify, and have personal conduct of the departments and the functions as to which they shall speak here, and that with a view of being helpful in the measure in which it is in our power to contribute to the hearing that you have undertaken.

The CHAIRMAN. Who will represent this organization?

MR. LEHMANN. In one sense I shall, but there will be witnesses—I have not prepared the names of all of them. For example, to illustrate, the mechanical features of the telephone system will be presented by the engineers, or the chief engineer. As to its commercial development, the general manager or superintendent, and then for comparative information as to the operation of systems in other countries, the statistician of the company. In other words, we will try to give you the best testimony which the nature of the case demands, of men closest to the facts.

The CHAIRMAN. When will it be convenient for you to be heard?

MR. LEHMANN. We had supposed that the question, in its general phases, would be taken up in the first instance by the railroad companies and we would be prepared to follow after them. We are at work now gathering this material and putting it into the most compact shape that it is within our power to do in order to take no more of your time than is necessary.

It would be convenient to us if we could have some days' notice, because we would like to bring men from Europe who can speak from personal observation of the operation of the systems there.

The CHAIRMAN. Will you kindly advise us, Mr. Lehmann, when it will be convenient for you to have the hearing that you indicate?

Mr. LEHMANN. I will do the best I can in that way.

The CHAIRMAN. The committee will now hear Mr. MacKinnon.

**STATEMENT OF MR. F. B. MacKINNON, UNITED STATES INDEPENDENT TELEPHONE ASSOCIATION, WASHINGTON, D. C.**

Mr. MACKINNON. Mr. Chairman and gentlemen, in behalf of the United States Independent Telephone Association, we desire to appear to discuss the phases of the topics before you of control of telephone companies by the Interstate Commerce Commission, and the other matter, that which Mr. Lehmann has discussed, of the relative merits of Government ownership as compared with commission control. As your committee understands, the Interstate Commerce Commission, under the act to regulate commerce, controls the telephone companies, all of them. We have some 8,000 companies who are interested, and in their behalf we desire to have some time set aside in which to discuss that part of the committee's work. We desire to make some suggestions as to changes in the act and to discuss the present methods of control.

The CHAIRMAN. Who will desire to appear on behalf of your organization?

Mr. MACKINNON. I shall appear in behalf of the organization in the discussion of the commission control. As to the Government ownership discussion, we shall submit names later of those of our organization fitted to discuss the various phases of that. I desire to have notice sent to me at my office in Washington.

The CHAIRMAN. When would it be convenient for you to take the matter up?

Mr. MACKINNON. We would prefer not to take this up until after the 10th of December.

The CHAIRMAN. Please advise the committee when it will be convenient to you.

Mr. MACKINNON. Very well, Mr. Chairman.

The CHAIRMAN. Proceed, Mr. Benedict.

**STATEMENT OF MR. ALBERT T. BENEDICT, 191 BROADWAY, NEW YORK.**

Mr. BENEDICT. Mr. Chairman, on behalf of the Western Union Telegraph Co., I ask to be heard before your committee when the proper time comes, and I suggest that when you notify Mr. Lehmann, and Mr. Lehmann advises you what date will be convenient, that will suit us entirely. I think we can present our views at that time.

The CHAIRMAN. Who will appear on behalf of the company?

Mr. BENEDICT. I will appear, Mr. Chairman.

Mr. THOM. Mr. Chairman and gentlemen, of course I can not know now what the committee will decide upon in executive session as to its methods of procedure. I will simply say that we have been exceedingly diligent in trying to get ready for this hearing, but there is a certain organization of witnesses and presentation that we will have to make after we know when we will be called. I would be very

glad, while holding ourselves in readiness to obey the summons of the committee, to know some time in advance as to when you expect us to begin the presentation of our case. I would suggest 10 days after you have determined when we shall be called. We would want probably to present the question of the present situation in regard to railroad credit, for example, and we would have to know the methods of presenting that as well as presenting these other matters, which we have already in mind as proper matters for this committee to consider.

Senator BRANDEGEE. Let me ask you this question, Mr. Thom: In case the committee would want to proceed to-morrow, and would want to summon any of the railroad representatives——

Mr. THOM. We would not be ready to-morrow.

Senator BRANDEGEE. Is there any representative of any railroad who could proceed upon any subject to-morrow?

Mr. THOM. Not with benefit to your consideration. We want to present the matter in a compact way and not in a disorganized way. We have not reached the point of organization.

Senator BRANDEGEE. I simply want to suggest, if the chairman will permit me, before we go into executive session, that I had assumed that we were going to meet here to-day and proceed at once and continuously, until Congress met at least, and then probably further, and I would like to ask, Mr. Chairman, if there is anybody who could go on to-morrow who is present in the room now?

Senator ROBINSON. A number of gentlemen have stated that they could—representatives of certain chambers of commerce.

Senator BRANDEGEE. Very well.

The CHAIRMAN. We will have a list of them made out.

Senator UNDERWOOD. Before we proceed to executive session, I move that the chairman request those gentlemen who are ready to proceed to-morrow to appear here at 10 o'clock.

Mr. ADAMSON. Mr. Chairman, we gave notice some three months ago that we would meet to-day and proceed with the investigation. Mr. Thom has been informed and the country understands who the witnesses are who know most about this and who suggested this investigation. I shall insist in executive session and here that this investigation commence with the testimony of those people who understand more about the trouble and difficulties of the situation, in order that the others may hear them and examine them and reply to them and testify in rebuttal. If it means a delay of 10 days, I will consent to that.

The CHAIRMAN. You may proceed next, Mr. Harrison.

#### **STATEMENT OF MR. THOMAS B. HARRISON, REPRESENTING THE ADAMS AND AMERICAN EXPRESS COS.**

Mr. HARRISON. Mr. Chairman and gentlemen, I desire to enter my appearance on behalf of the Adams and American Express Cos. We have a committee representing the principal express companies for which we can enter our appearance, if the committee would like us to.

The CHAIRMAN. Will you please furnish the names of that committee?

Mr. HARRISON. Yes, sir. We have nothing to propose and nothing to object to, our position being that we have been investigated lately by the Interstate Commerce Commission, and our whole business changed and revamped on a nation-wide basis. We have asked the various State commissions to adopt the rates, rules and regulations, and practices prescribed by the Interstate Commerce Commission, and practically all the States have done so, and we are in hopes that the balance of the States will follow suit, our position being that if the committee desires any information of any character whatever, we will be glad to endeavor to furnish it, if given time to prepare it. This committee is composed of Mr. C. W. Stockton, general counsel of the Wells-Fargo; Mr. R. C. Alston, general counsel of the Southern Express Co.; and myself.

The CHAIRMAN. What are the addresses of those gentlemen?

Mr. HARRISON. My address is 61 Broadway; Mr. Stockton's is 51 Broadway; and Mr. Alston's, Atlanta, Ga.

Senator ROBINSON. Mr. Chairman, I suggest that anyone who desires to be heard simply hand in his name and address to the clerk.

Mr. HAMILTON. Mr. Chairman, I desire to make a statement. Under date of November 12, the members of this committee were notified that a certain number of publicists and economists had already been invited to appear before this committee on November 20, and I assume that some of those gentlemen must be prepared.

Mr. ESCH. What response have we received?

The CHAIRMAN. I have inquired as to whether any of those gentlemen are present, and Prof. Commons alone responded. I will now inquire whether there are any other economists or publicists who have received the invitation of the committee to appear before it, and who have by letter indicated their willingness to appear, are present? [After a pause.]

Mr. HAMILTON. Have any acceptances been received?

The CHAIRMAN. Oh, yes; a number of acceptances have been received. I will have a list of those gentlemen presented at the executive session.

Mr. ADAMSON. I suppose they think we are only making up a calendar to-day.

Senator ROBINSON. I move that we proceed to executive business.

The CHAIRMAN. If the Senator will allow me, I would like to inquire as to whether there are any representatives of railway employees or railway brotherhoods present? [After a pause.] Are there any financiers or investment bankers present? [After a pause.]

Mr. C. B. JOHNS, of Ebensburg, Pa. Mr. Chairman, I would like to speak for a short time for the Brotherhood of Engineers, but I have not conferred with the higher officers. I thought they would be here. I represent a particular lodge in appearing for the engineers. I shall not take very long, and would be ready to proceed to-morrow, or any other day.

The CHAIRMAN. You represent an individual lodge there?

Mr. JOHNS. That is all; yes, sir.

The CHAIRMAN. Are there any others who represent the employees of railway brotherhoods or organizations? [After a pause.] Are there any financiers or investment bankers here who desire to be heard? [After a pause.] Is there any attorney general of any

State present who would like to be heard on behalf of his State? [After a pause.] Are there any others, outside the classes I have referred to, who would like to be heard? [After a pause.]

Mr. MARSH. Mr. Chairman, I have already given my name to the clerk. I would like to be heard to-morrow. I represent the Committee on Real Preparedness.

The CHAIRMAN. I would state that if we go into executive session we will resume the hearing to-morrow morning at 10 o'clock.

Senator ROBINSON. And all of those gentlemen who have announced themselves as ready will please be present.

Mr. ADAMSON. Would it not be proper not only to give it out to the press but have the clerk of the committee notify those whose hearings are set on a particular day, so that they will know when to come?

The CHAIRMAN. I think those who are now ready to be heard should be here to-morrow at 10 o'clock, and then we will arrange regarding their hearing, and we will comply with the suggestion of Mr. Adamson in regard to giving notice.

It is moved that the committee now go into executive session.

The motion was agreed to, and at 12 o'clock and 2 minutes p. m., the committee proceeded to the consideration of executive business, and after which the doors were reopened and the committee adjourned until Thursday, November 23, 1916, at 10.30 o'clock a. m.

## INTERSTATE AND FOREIGN TRANSPORTATION.

THURSDAY, NOVEMBER 23, 1916.

CONGRESS OF THE UNITED STATES,  
JOINT COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D. C.*

The committee met, pursuant to adjournment, in room 326, Senate Office Building, at 10 o'clock a. m., Senator Francis G. Newlands presiding; Hon William C. Adamson, vice chairman.

The joint committee resumed its session pursuant to public resolution No. 25, joint resolution creating a joint subcommittee from the membership of the Senate Committee on Interstate Commerce and the House Committee on Interstate and Foreign Commerce to investigate the conditions relating to interstate and foreign commerce, and the necessity of further legislation relating thereto, and defining the powers and duties of such subcommittee.

The CHAIRMAN. The committee will come to order.

Mr. LLOYD. Mr. Chairman, before you proceed, I would like to have the privilege from the committee of sitting here during the various hearings that you may have, as a visitor, not as one who expects to be heard.

The CHAIRMAN. We will be very glad to accord you that privilege.

Mr. THOM. are you ready to proceed on behalf of the railroad executives?

Mr. THOM. Yes, sir.

Mr. HAINES, of Galveston, Tex. Mr. Chairman, may I ask a question for information. I have been informed that Judge Cowan a few days ago made some suggestion as to setting aside or fixing some date at which the Texas shipping interests might be heard. May I inquire whether that has been done?

The CHAIRMAN. No: no time has been fixed. I presume within a few days some kind of program will be arranged, but none has been determined upon as yet.

Mr. ADAMSON. Mr. Chairman, I suggest that you announce that in due time, and with sufficient notice, these appearances will be set and everybody informed.

The CHAIRMAN. I will make that announcement now.

Senator CUMMINS. I do not know that we can assign particular dates for particular witnesses. We will have to go on as rapidly as we can, I take it. We will do the best we can to convenience them, but I do not believe we can set aside a particular day.

Mr. ADAMSON. We will try to fix the date as nearly as possible, as the railroads do in fixing a schedule—come as near to it as we can.

Mr. THOM. I hope you will be more successful.

The CHAIRMAN. Mr. Thom, you may proceed.

**STATEMENT OF MR. ALFRED P. THOM, COUNSEL RAILROAD EXECUTIVES' COMMITTEE, WASHINGTON, D. C.—Resumed.**

Mr. THOM. Before proceeding to discuss the questions which you have under consideration, I would like to state that I have tendered to the clerk copies of two printed pamphlets which we have prepared, and which contain certain questions that we would like to have the various witnesses consider as they appear. One of them is intended for the consideration especially of bankers, and the other is intended especially for the consideration of economists and publicists. When we learned that certain economists and publicists had been invited by the committee, I wrote to each one of them a letter which I shall now read to this committee, sending each one a copy of these pamphlets, intended for the consideration of the publicists:

OCTOBER 26, 1916.

MY DEAR SIR: I understand that you have been, or will be, invited to appear before the joint committee of Congress, appointed by the President under the joint resolution approved July 20, 1916, to study the entire subject of transportation.

In my capacity as counsel for the railroad at this hearing I shall ask that your attention be directed to certain aspects of the inquiry and that you be invited to give your views in respect to them.

It has occurred to us that, in an inquiry of such importance, you may desire an opportunity in advance for mature reflection in respect to the subjects about which you will be expected to testify, and I am accordingly taking the liberty of handing you herewith a list of the subjects which I will ask the committee to specifically bring to your attention. It is not our purpose to overburden you in the matter of your preparation, and there may be some subjects in the inclosed list which you would prefer not to take the time to consider. If you will call any such matters to my attention I will, so far as you are concerned, withdraw my application to the committee in respect to them. May I suggest that, in so far as you feel disposed to give your views on these subjects in your main statement to the committee, the time involved in putting them before you by specific questions will be saved.

Trusting that the inclosed list of subjects may facilitate you in the consideration of some of the vital aspects of this inquiry, I remain,

Sincerely, yours.

Senator BRANDEGEE. Is the list of inquiries that you sent them to be made part of the record at this immediate point?

Mr. THOM. No; I just submit it for the use of your committee. I would like to have the members of the committee read over these questions.

Mr. ADAMSON. Why not let them be printed in the record as part of your statement here.

Mr. THOM. I have no objection.

Senator CUMMINS. Where is the list of questions?

Mr. THOM. They are right there [indicating].

Mr. ADAMSON. I think that ought to go in the record as part of your statement.

Mr. THOM. They are there for the consideration of each one of you gentlemen.

Senator BRANDEGEE. Inasmuch as the letter transmitting the questions has been made part of the record, I rather think the questions themselves should be.

Mr. THOM. I did not care to have any of those matters in the record. I have no objection to its being done, how-

Mr. ADAMSON. That ought to go in.

The CHAIRMAN. If there is no objection, that will be made part of the record.

(The pamphlets referred to are here printed in full as follows:)

SUBJECTS WHICH ECONOMISTS AND PUBLICISTS WILL BE ASKED TO CONSIDER.

1. What is the present condition of the credit of American railways?
  2. Is it as good as the public interest requires?
  3. While there have been some instances condemned by public opinion as financial mistakes and dishonesty on the part of railway managers or financiers, are such instances the exception in railroad management, or do they constitute a condition prevalent enough to account for the decline which has taken place in railroad credit?
  4. Are there any governmental causes for the decline of railroad credit?
  5. Under existing systems of governmental regulation, is not the amount of railroad revenues largely determined by governmental regulating bodies?
  6. Is the power of the railroads to control their expenses substantially affected by forces beyond their control, such as labor unions, the acts of legislatures, the demands of regulating authorities for facilities and service, etc.; income and their expenses, are or are not forces in operation which, unless controlled and safeguarded, menace the stability of the existing system of maintaining transportation facilities?
  8. Is there any way of meeting this situation and of creating conditions which will attract investors except to introduce into the systems of regulation principles which will reasonably assure proper income and reasonably protect the railroads against the unjust exactions of labor and excessive demands in regard to conveniences and facilities?
  9. Do the present systems of regulation contain adequate safeguards in respect to these matters?
  10. Is the present market for railroad securities narrowed by any of the following causes, and if so, which, and to what extent?
    - (a) By the war in Europe and its consequences, such as that Europe is now and after the war will probably be a borrower rather than a lender of capital, and the effect of the large balance of trade in our favor;
    - (b) By the exhaustion of underlying liens and the consequent necessity to obtain new money through inferior liens or without security, or by stock issues;
    - (c) By the danger which has become apparent to the investing public of financing too largely through bond and note issues involving fixed charges;
    - (d) By the superior attraction of other classes of investment, such as municipal securities, public utilities, industrials, and the tax-free securities which will be issued under the Federal farm loan act;
    - (e) By the success of labor in enforcing its demands without submitting to arbitration, and without investigation;
    - (f) By the inability of the railroads to promptly increase their revenues to meet their needs;
    - (g) By the fact that, although transportation is a business, the business questions affecting it are largely determined by the exigencies of politics and by political and not business considerations;
    - (h) What effect has the increase in prices, from whatever cause, had upon the railroad situation? The high cost of living has affected everybody, but the man dependent upon his labor has received an increase in wages; the man dependent upon income from railroad securities finds not only his income, as measured in money stationary, and sometimes lessened, but his income as measured by purchasing power greatly diminished. Has this had an important effect upon the attractiveness of railroad securities?
- These are mere suggestions. It is felt that the economists can develop this price movement effectively, and thus show whether the investor is entitled to increased returns.
11. Are the railroad of the country, generally speaking, able to finance themselves through the sale of stock, or must they do so by means of securities involving fixed charges? If, generally speaking, reduced to the latter method, would not that substantially affect their credit?
  12. Is there any rule of financial safety and conservation which establishes a relationship between net income and fixed charges? Is there any such rule

which established a relationship between the amount of capital, which imposes fixed charges, and the amount of capital which should be contributed by the owner and represented by stock? If so, state what the rule is.

13. Has this proportion been exceeded in American railroad practice, and under present conditions of limited net income, is there any adequate opportunity of accomplishing the necessary financing by stock issues?

14. What margin, speaking generally, is left for additional fixed charges?

15. Under present average standards of earnings for a representative series of years, are not the margins left for any kind of financing, through securities involving fixed charges or otherwise, entirely too small?

16. Should a system of regulation be based upon conditions as they are made by an increase of revenue growing out of the European war business, or should it be based on normal conditions of traffic?

17. Is the public interested that the carriers shall have adequate earnings in order to insure adequacy of transportation facilities? If so, has the public a vital interest that the revenues of the carriers shall not be unduly reduced and consequently that public authority should safeguard the minimum as well as the maximum rate? Is the public also interested in the regulation of the minimum rate so as to insure the proper relation of the terms on which business may be done by communities served by different lines of railroad?

18. As railroads are fundamentally essential to the public comfort, prosperity, and welfare, should they, in the public interest, be put upon a firmer and more stable basis than that which they now occupy?

19. Has there in recent years been a decline—in fact, a practical suspension—of construction of new railroads into new territory?

20. Is it a fact that in the year ending June 30, 1916, there were constructed in the United States less than one thousand miles of track, and is this less than in any year since the Civil War, and with the exception of the period covered by the war less than in any year since 1848?

21. If so, has this been because there is no need for such construction, or because railroad building has become unattractive to investors?

22. Have the railroads of the country been kept up to the proper standard of efficiency, and if not, has it been because of a lack of money?

23. Is it true that, up to the present time, governmental regulation has had for its main purpose the correction of what the public have considered abuses and the elimination of what the public have considered evils in railroad management?

24. Is it possible, without destructive consequences, for a system of governmental regulation to be based permanently on the principle alone of correction and elimination of abuses, or must it also adequately provide for conservation, encouragement, and protection?

25. Whether or not there is a serious menace to effective regulatory control in the tendency on the part of commissions to exercise the functions of management—in other words, to substitute their judgment on purely business propositions for the judgment of the railroad managers? Can there be salutary regulation unless this tendency is checked? The courts have been keen in their criticism of this tendency. Attention is called to the following cases:

*People v. Stevens*, 197 N. Y., 1.

*Bacon v. B. & M. R. R.*, 83 Vt., 421, 442.

*City of Knoxville v. Knoxville Water Co.*, 212 U. S., 1, 18.

*C. & M. & St. P. Ry. v. Wisconsin*, 238 U. S., 491, 500.

26. Realizing that transportation facilities are the foundation of community life, and are thus a prime physical essential to the public welfare, can there be any wise system of governmental regulation which, while correcting abuses, fails to insure the stability, adequacy, and growth of the instrumentalities of commerce?

27. Have not the processes of regulation already secured the public, generally speaking, against extortionate charges and against favoritism and undue discrimination?

28. Have the existing systems of regulation been more largely concerned with the purpose to give to the shipper the lowest possible rate rather than with the purpose to prevent extortionate charges? Does the former view lose sight of the public interest in the character and standard of transportation facilities?

29. In view of the practical suspension of railroad construction, the decline of railroad credit, and the marked swing of public favor to other kinds of investment, has the time come when it is proper to make a careful review of the governmental forces which are operating on the instrumentalities of transport-

tation in order to ascertain whether they take proper account of the public interests in the establishment and maintenance of adequate transportation facilities?

30. It being impossible, under a system of private ownership, to coerce unwilling investors to make investments, and it being necessary to invite voluntary investments by offering reasonable assurance of safety and of adequate returns on the investment, does the present system of governmental regulation contain the elements essential for these purposes?

31. Has the time come when in the public interest the elements of constructiveness, encouragement, and protection should be introduced into the governmental system?

32. If so, should the system of governmental regulation possess, to the greatest extent possible, without injury to the public interests, the elements of simplicity and homogeneity?

33. In this connection, please consider whether the tendency to long and continuous lines of railroad is sound from an economic standpoint and is thus in the public interest?

34. Is this tendency due to the natural operation of economic laws which demand that transportation facilities shall accommodate themselves to the requirements of commerce, or is it an undesirable condition forced upon commerce by private interests?

35. If the existence of these long and continuous lines of railroad under a single management is in the public interest and is justified by sound economic considerations, should there exist, in the public interest, conflicting powers of governmental regulations over different parts of the same line of railroad or over different functions of the same line of railroad?

36. Is it a fact that, since the present dual system of governmental regulation of railways was adopted, American railways have, practically speaking, ceased to be local or State facilities in the sense they formerly were and have in substance become highways for interstate and international business? If so, should the system of governmental regulation recognize this fact, or is the fact so unimportant that it may be justly ignored and so unimportant as to justify the continuance of the policy of treating these facilities, which have now become national in importance, as still local or State facilities in many of their substantial and controlling aspects?

37. Under a system of private ownership, are the standards of efficiency and the maintenance of efficiency an instrumentality of commerce dependent on its earnings; in other words, can high efficiency be continued without adequate earnings?

38. If adequate earnings are essential to a proper and sustained standard of efficiency, should there be more than one public authority to determine what in the public interest the proper standard is?

39. If the States have the power to fix rates and to determine the standard of service as to State business of a railroad company also engaged in interstate and foreign commerce, may the State, in cases where no question of discrimination against interstate or foreign commerce is involved, fix the State rates high enough to escape the line of confiscation but so low that no substantial contribution will be made by State business to the maintenance of the standard of efficiency deemed essential in the public interest by the Federal authorities?

40. Does such a power on the part of the State involve the power either to fix the standard of efficiency of these instruments of commerce contrary to the views of the National Government and to the views of other States, or to throw the burden of establishing and maintaining a high standard of efficiency on interstate and foreign commerce and on the commerce of other States?

41. If so, is this in the public interest?

42. Can a power to thus prejudice the interests and to obstruct the policy of other States be justly left to one of the States? Should it be the right of each State to demand that no other State shall possess the power to determine a question in which both States have this important interest?

43. Should these important questions be determined, not by one of the States which may have a different interest or a different policy from the others but by the National Government acting for and on behalf of all the States and thus alone able to act impartially between them?

44. Have your investigations disclosed any influences tending to impede the development of the railroads or to interfere with the free flow of commerce in connection with regulation by State tribunals? Have the following or other instances been brought to your attention?

## (a) In connection with State regulation of rates—

(1) Action of Alabama in fixing rates—Saunders & Co. v. Southern Express Co., 18 I. C. C., 415.

(2) Action of Arkansas—In re Freight Rates between Memphis and Arkansas points, 11 I. C. C., 180. Memphis v. C., R. I. & Pa. Ry., 39 I. C. C., 256.

(3) Action of Texas—Shreveport cases, 23 I. C. C., 31. Houston & Texas Ry. v. United States, 234 U. S., 342. R. R. Com. of La. v. Arkansas, etc. Ry., 41 I. C. C., 83.

(4) Action of Nebraska—The Missouri River-Nebraska cases, 40 I. C. C., 201.

(5) Illinois passenger rate case—Business Men's League of St. Louis v. A., T. & S. Fe Ry., 41 I. C. C., 13.

## (b) In connection with regulation of securities—

(1) The failure of Massachusetts to approve an issue by the N. Y., N. H. & H. Railroad Company of \$67,000,000 convertible bonds after approval by Rhode Island and Connecticut.

(2) The imposition of a fee of \$600,000 by the State of Illinois upon the New York Central as a condition of approval of a recent issue of securities.

(3) The condition imposed by the Arizona Commission in granting right to the Southern Pacific to issue securities that a large amount should be expended in that State.

45. Is railroad transportation a prime essential of national defense?

46. Is it a fact that transportation facilities in America have already been proven to be inadequate to handle the increased business due to the war in Europe? If so, would this condition of inadequacy be much greater in the event of war in the United States?

47. Is it important to the national defense that, in times of peace, the standard of railroad efficiency should be established, so that, in times of war, the railroads could be readily made available for the purposes of national defense?

48. As the duty of national defense rests upon the National Government, is transportation so essential to the national defense that the National Government should likewise have the power to fix the standard of railroad efficiency, or should the power to lower the standards of efficiency be in the States which are not burdened with the responsibility of the national defense?

49. Can the standard of railroad efficiency be established and maintained by the National Government unless that Government has the power to deal with all questions of railroad credit and railroad policies as far as they are within governmental control?

50. In view of the constitutional power and obligation of the Federal Government as to the regulation of interstate and foreign commerce, of the Federal Government's responsibility for the national defense, and in view of the necessity for prompt and harmonious governmental action in respect to security issues, should there be a single governmental system of regulating security issues of carriers engaged in interstate and foreign commerce, and should this power of regulating be only in the National Government?

51. Please state what your conclusions are as to the necessity of permitting such a standard of earnings that in prosperous years an adequate surplus may be laid up to carry the railroads over the lean years without the necessity for any diminution of the work of maintenance and improvement and without the necessity for a suspension of reasonable returns to those whose means have created the instrumentalities of commerce.

52. In view of the power of regulation which is, or should be, exerted by the Interstate Commerce Commission over carriers engaged in interstate and foreign commerce, which, of course, involves, or should involve, a power to prevent abuses, is there any reason for the application to railroad companies of the anti-trust laws?

Consider this especially in view of the necessity for commerce from all sections to move on relatively equal terms and of the fact that commerce being continuous over several lines of railroad there must be an understanding as to through rates. Do not these considerations involve the necessity for traffic officers to meet and to agree upon rates and terms of service, subject, of course, to the approval of the Interstate Commerce Commission?

53. As the continued operation of railroads is essential to the public welfare, should the laws permit such operation to be interfered with, either by combinations of capital or by combinations of labor?

54. If investments of capital are by law required to be subject to the public obligation to keep the railroads in operation, should the law attach to labor when it enters into this public service and enjoys employment in it an obligation not to combine to prevent the operation of these facilities which are essential to the public welfare, it being, of course, understood that no law should undertake to limit the freedom of individuals in respect to service or terms of employment, but only to prevent combinations and conspiracies to do the unlawful thing of obstructing or interrupting public service?

55. If in the public interest labor should be thus deprived of the power of combination for the purpose of preventing the operation of a public facility, how should the law deal with the question of wages, so that the system may be balanced by preventing the oppression of labor by capital and the oppression of capital and the public by combinations of labor?

Washington, October 6, 1916.

#### MEMORANDUM RELATIVE TO QUESTIONS TO BE CONSIDERED BY BANKERS AND INVESTMENT BROKERS.

##### I. LARGE SUMS OF MONEY NEEDED FOR REFUNDING PURPOSES AND FOR IMPROVEMENTS.

The amount of money required for these purposes will be presented by the railroads.

Are any of the bankers sufficiently acquainted with the future needs of the railroad to give any estimates of these requirements?

##### II. INCREASING DIFFICULTIES IN THE WAY OF RAISING THESE SUMS FOR REFUNDING PURPOSES AND FOR IMPROVEMENTS.

###### 1. THE EUROPEAN MARKET FOR RAILROAD SECURITIES HAS LARGELY DISAPPEARED.

Europe will need her investment funds to repair the ravages of war and to maintain and develop her industries, which is the only way to enable her to carry the burden of debt which will be left by the war. She may for a while spend large sums in this country for munitions during the war and for machinery after the war, but there will be little, if any, capital available for investments in our railroads and other industries.

The railroads will suffer, in common with other industries seeking capital, but they will be peculiarly affected because Europe has heretofore invested immense sums in railroads. It has been stated that before the war \$6,000,000,000 in American securities were held in Europe, of which about \$4,000,000,000 were in railroad securities. Is this a fair estimate? If not, what is a fair estimate?

Not only will there be little market for railroad securities in Europe, but the securities held there will be sent to this country for sale, to a greater or less extent, depending upon many circumstances.

To what an extent has there been a sale of these securities in this country up to the present time?

To what extent is the situation relieved by use of these mobilized securities as collateral for loans? Will such securities eventually find a market in this country?

These general facts should be developed by international bankers and by international monetary experts.

It is important to develop clearly and by simple processes of reasoning the theory of the balance of trade. It would seem as if we could not permanently continue to export more than we import unless one of three things takes place:

(1) Imports of gold, which can not continue long in large amounts.

(2) Loans to European countries, which result in a less amount of capital available for American purposes.

(3) Sale of American securities owned in Europe in America, which tend to depress the price of American securities and make it all the more difficult to raise money for American purposes.

Questions of international finance are simple propositions to bankers, but the average man has little conception of their significance. These questions should be made plain, especially as bearing upon the available supply of loanable money.

## 2. ABILITY OF THE RAILROADS TO RAISE MONEY.

Much confusion arises from the use of the expression "railroad credit." When railroad managers say their credit is bad they are confronted with the fact that their bonds and notes are in demand and sell on a higher basis than any other bonds, except State and municipal bonds.

The real question is not so much whether the credit of the railroads, in its narrow, technical sense, namely, ability to borrow money, is impaired, as whether the railroads are able to raise money through issues of stock, which is the safest and wisest method of financing.

Of course, it is important to show that the ability to borrow has been impaired, and this should be fully developed, as indicated later, but we believe that the real vital issue is the decline in the ability to raise money through the issuance of stock.

## 3. DANGER RESULTING FROM THE INCREASING RATIO OF BONDS TO STOCK.

It is conceded that the safest financial structure is one in which stock predominates over bonds. The stock is the equity in the property. It represents the margin of safety. Just what this margin of safety should be is difficult to determine. Some say stock should be 60 per cent of the capitalization (Prof. Ripley); others say 40 per cent is enough. The tendency of recent years is toward decreasing this margin, and thus enormously increasing the danger of bankruptcy in times of stress. Until railroads can finance largely from stock there is a growing menace in times of business depression.

It should be borne in mind that the fixed charges are represented not only by interest on bonds; there are the rentals of leased lines. Whether or not many of the railroads have wisely burdened themselves with fixed charges in the form of rentals is immaterial. We are confronted by a condition of financial instability, which ought not to be made worse by decreasing the margin of safety. The Boston & Maine Railroad, for example, has about 50 per cent bonds and 50 per cent stock, but because of its lease obligations and its inability to issue stock, its equity as represented by the stock is but 20 per cent of its total capital liabilities as represented by stocks, bonds, and notes of itself and of its leased lines. Its common stock, although earning at the rate of nearly 10 per cent a year, is quoted in the market at about 45, due principally to this menace of an unstable financial structure. This same railroad showed a deficit of \$2,000,000 in 1914—the capitalization and lease obligations being the same as at present.

Bankers can cite analogous instances.

Bankers can show that it is for their selfish interest as bankers that the railroads should finance through bonds and notes, but that it is the unsafe and unsound method.

They should develop the proper and safe relationship between bond issues and stock issues, and the danger now confronting the railroads from an excessive issue of bonds involving fixed charges as compared with stock. They should develop the dangers in this decrease in the margin of safety.

We attach herewith statements of the following bankers, railroad executives, and economists: Frederick Strauss, John E. Oldham, Daniel Willard, W. H. Williams, Prof. W. Z. Ripley, Cleveland and Powell.

Also an extract from the Report of the Interstate Commerce Commission in the Five Per Cent Case; also Report of the Railroad Securities Commission.

## 4. UNDERLYING LIENS ARE RAPIDLY BEING TAKEN UP.

There has, moreover, been a decline in credit of the railroads in the sense of ability to borrow new money through the exhaustion of underlying liens, as contradistinguished from the market price of desirable railroad securities already upon the market. A careful analysis of the extent to which these liens are being exhausted should be made. Bankers can testify to such instances as come within their knowledge and such testimony, coming from such a source, is extremely valuable.

## 5. INCREASING ATTRACTIVENESS OF COMPETING SECURITIES.

(a) State and municipal bonds yield a greater return, i. e., sell at a lower price, because of the enormous issues of late years. The security is as good as ever, but the market for low-interest-yielding bonds is limited. Hence mu-

municipalities have been obliged to put out bonds at higher rates of return—thus seriously competing with high-grade railroad bonds.

Furthermore, such bonds are exempt from Federal income tax and usually from State taxes.

(b) Industrials are becoming seasoned and consequently more attractive to conservative investors.

It would be interesting to know to what extent investors are seeking higher returns because of the increased cost of living. A person having a fixed income from railroad bonds of \$4,000 from \$100,000 bonds, finds that it now requires, say, \$5,000 to buy what could be bought 10 years ago for \$4,000. Instead of reducing his standard of living has he not turned to investments which yield higher returns?

(c) Public utilities are becoming more firmly established, and furthermore under the laws of many States are protected from competition.

(d) Bonds based upon real estate mortgages are much advertised. Is this an important field for investment? What will be the effect of this rural-credits act in providing an attractive investment?

#### 6. MARKETS FOR RAILROAD SECURITIES ARE BEING GRADUALLY RESTRICTED BY LAW.

New York insurance companies, under the law of 1909, were prohibited from holding any stocks. Formerly they held largely of railroad stocks.

Furthermore, in many States railroad bonds ceased to be legal investments for savings banks unless dividends in stock are maintained.

Can the bankers give other analogous instances?

#### 7. INVESTORS ARE UNFRIENDLY TOWARD RAILROAD SECURITIES.

Whatever may be the causes, the experience of investment bankers coming into personal contact with customers is that investors do not want railroad securities to the extent they did formerly. Bankers can testify as to the reasons given, but probably back of the prejudice is the feeling that the public authorities will not permit a sufficient increase in rates to take care of the continual increase in cost of operation. The employee comes at the railroad with a club and compels an increase in wages; the railroad humbly asks the public authorities for a sufficient increase to take care of these enormous increases and is told by these authorities, "You do not need higher rates; practice virtue, practice economy, forego your dividends, and you will have enough money to pay higher wages."

The testimony of brokers as to the fact of growing disposition among investors as regards railroad securities and as to the reasons given by them will be extremely helpful.

#### 8. ARE SAVINGS BANKS AND TRUSTEES INVESTING IN RAILROAD SECURITIES?

Formerly railroad bonds and many railroad stocks were regarded as the safest and most conservative investments. To what extent has this demand from conservative investors fallen off?

Testimony of investment bankers will be invaluable on this point. There is no doubt that there has been a great change in this respect.

#### 9. WHAT ARE THE CAUSES OF THIS DECLINE IN ABILITY TO FINANCE BY STOCK ISSUES?

The short answer is the permanent decline in net revenue, but the fact that prices of stock have not responded to the remarkable recovery in net earnings the past year shows that the causes are deeper.

The testimony of bankers is valuable for the purpose of showing the fact that there is a decline in the popularity of railroad securities, especially stock. The bankers can also give the reasons why they have been cautious in recommending railroad securities, especially stock, and why investors who act without advice do not want railroad securities. These reasons are the real reasons why railroad credit—in its broad sense of ability to raise money from any source—has declined. These objections may be based upon sound economic principles, statistical evidence, careful analysis, or they may be based merely upon prejudice, but they are the real and effective reasons for the inability of the railroads to raise funds.

The following have been suggested as some of the causes of decline in public favor for railroad securities:

(a) Increasing tendency of commissions, especially the State commissions, not only to regulate, which is proper, but to manage the railroads. In other words, to substitute their judgment for the judgment and discretion which should be lodged in the directors and officers of the railroad. For example, one commission ordered a railroad not to make an exclusive contract for sale of scrap iron though it was demonstrated to the satisfaction of the railroad officials that the best results were thus obtained.

(b) Inability of the carriers to control their expense accounts because of increasing demands of labor with ability through organization to enforce those demands, coupled with the corresponding inability of the carriers to control their income account.

This latter is due to—

(1) The extraordinary power of suspending rate schedules resting with the Interstate Commerce Commission and the delay necessary incident to a general investigation.

(2) The legal obligation of the carrier to sustain affirmatively to the satisfaction of the commission the reasonableness of the suspended rate.

(3) The tendency of the commission to permit rates to be adjusted on the basis of years of prosperity, allowing only a moderate return in such years, without chance of accumulating a reasonable surplus for lean years. Bankers can emphasize the necessity for ample surplus if securities, especially stock, are to be made attractive.

The report of the Railroad Securities Commission on the necessity for a large surplus is particularly impressive.

(c) Tendency of State legislatures and commissions to increase the burdens, while at the same time decreasing the revenues. The tendency of each State is to get all that it can in taxes and in service and improvements at the least possible cost. It is the jealousy of each State of its neighboring State, rather than of Federal Government, which produces this result.

(d) Restrictions placed upon the issuance of securities by State commissions. The tendency to regulate price at which stock may be issued to stockholders takes away a valuable and attractive right.

(e) Alleged misconduct of railroads. The tendency on the part of public authorities is to charge the decline in credit to the financial mismanagement of railroads.

Bankers will doubtless be asked their opinion on this important point. In the Five Per Cent Case, Mr. Frederick Strauss, in referring to a conversation with Sir George Paish, said:

"I asked about the feeling of the British investor toward American railroads by reason of irregularities in railroad management. Sir George Paish told me that unquestionably these exposures had had considerable influence on the mind of the investor, but that primarily it was the feeling that costs were going up, that taxes were going up, that the margin of surplus earnings available for dividends was declining, and that there was a growing feeling that the American railroad investments were things to be avoided."

#### 10. WHAT IS THE REMEDY?

The railroads believe that the first step is for the Federal Government to take exclusive control of these instrumentalities of interstate commerce.

No business enterprise can continue to thrive if it is treated entirely from the standpoint of restriction. In any system of helpful governmental regulation there must be introduced the principle of protection. One of the great difficulties with the present system of regulation is that it is entirely based upon the idea of restriction and contains no element of proper helpfulness and protection. As the Federal Government, having entered upon the field of regulation, is responsible to the country for an adequate system of interstate and foreign commerce, that Government must be in a position to protect the instrumentalities of such commerce from injury from any other source, and, as a consequence, the Federal Government must have full control of the instrumentalities of interstate and foreign commerce and must treat these instrumentalities not only from the standpoint of proper correction but also from the standpoint of proper support and helpfulness.

## COMMENTS ON THE DANGER OF FINANCING THROUGH EXCESSIVE BOND ISSUES.

Testimony of Frederick Strauss, of the firm of J. & W. Seligman & Co., bankers, New York, at the rehearing of the Five Per Cent case, at Washington, D. C., October 20, 1914.

Page 5767, printed record:

"In the first place, I want to emphasize as a principle of sound finance the necessity of railroads and of corporations—I am speaking only of railroads here—raising a very large part of their capital by the sale of stock as distinguished from the sale of bonds, bonds involving as they do a fixed interest and dividends on the stock being contingent.

"I think that statistics will show—those that I have been able to obtain from the records of the Interstate Commerce Commission—that whereas in 1890 the amount of bonds and stocks outstanding of the railroads were about equal, that the ratio has since declined, so that the latest figures I have been able to get show approximately about 62 per cent of all the railroads in the United States as being capitalized to that extent in bonds and about 38 per cent in stock.

"The ability of a railroad to raise money from the sale of stock by reason of the restriction of all the States that stocks shall be sold at par and not less is limited, of course, by the price at which those stocks sell. Even taking it before the closing prices of July 30, there were only a very small—comparatively small—number of railroads outside of the anthracite coal group that were able to raise money by the sale of stock at all. And, taking the prices of July 30, one might almost be tempted to say there was practically no company that could sell any volume of stock for its capital needs at par or higher."

Page 5773:

"Mr. BRANDEIS. Mr. Strauss, you pointed out to the commission, as I understood you, at the opening, the desirability of having an important part of the capital of a railroad in stock in order that a part of the capital charges might be contingent. Is not that true?

"Mr. STRAUSS. That is true.

"Mr. BRANDEIS. Well, if you are to insist in bad times as well as in good, as, for instance, the Baltimore & Ohio has done, in continuing as a fixed burden upon the income of the railroad the dividend, are you not defeating the very purpose which you have set out as the reason—and, I think, very appropriately as the reason—why an important part of the capitalization should be in stock?

"Mr. STRAUSS. One of the important things in having a large stock equity or ownership back of the bonds is to enable the railroad to borrow at a low rate of interest; and, furthermore, that in the event of a crisis such as the present, when the roads find it necessary to resort to borrowing—there is no question about being able to sell stock at the present time at par—their credit shall be of the best. That was the principal point I meant to raise; but, answering the question you put to me, it is true that one of the very objects in having a large contingent charge and only a moderate fixed charge is that in the event of disaster the road shall not be bankrupted; that it shall not have to go through the agonies and throes of a receivership, and thus bring about more important consequences to the whole country; whereas a suspension or reduction of dividends, while felt acutely by the stockholders themselves, is not of such national importance. So far as an individual road is concerned, that is true; but when such suspension of dividends, however, becomes general, so as to amount to a general conviction on the part of the people who have invested their money in railroad stocks that such suspension and reduction is going to become vast, I think it has an extremely harmful effect upon the general prosperity of the country. The very validity of the principle of finance arises out of the fact that it shall be contingent, so that in case of absolute necessity the dividends can be reduced."

Testimony of John E. Oldham, banker, of Boston, at the rehearing of the Five Per Cent case at Washington, D. C., October 20, 1914.

Page 5864:

"It must be borne in mind that high credit is essential to economical financing, and experience has shown that a railroad can not enjoy high credit unless the amount of its stock capitalization bears a proper relation to its total capitalization. In the standard roads we selected approximately three-fifths of the

total capitalization was represented by obligations carrying a fixed charge and two-fifths of the capitalization consisted of stock. If good credit is to be maintained, a close approximation to this ratio of bonds to stocks must be maintained.

"If a proper proportion of new capital is to be provided by stock issues, the integrity of dividends must be secured and assured by a safe margin of earnings. If the margin of earnings is not sufficient to attract capital for stock issues, and financing must be accomplished exclusively by bond issues, the equity, represented by stock, upon which the bond buyer relies for his protection, will be substantially reduced. When the equity behind the obligations of a road becomes greatly reduced, the safety of its bonds is called into question and the financing of its requirements becomes practically impossible.

"If our railroads are to obtain funds to meet their necessary requirements, it is clear that this attitude on the part of the investor must be changed; and we believe it is equally clear that it will be most difficult to change this attitude until there is assurance that the credit of deserving railroads is to be reestablished on a sounder basis through increased income."

DANIEL WILLARD, president Baltimore & Ohio Railroad, testified in Five Per Cent case, page 5722:

"Mr. LYON. I have just a few questions on capitalization. The Baltimore & Ohio bonds have been on the increase relatively in recent years, have they not?"

"Mr. WILLARD. You mean the aggregate amount?"

"Mr. LYON. Relative to the total obligations?"

"Mr. WILLARD. Yes.

"Mr. LYON. Does that indicate there is any equity back of that increase of bonds? My thought is this: As the railroad increased its supply of bonds, the money loaned on the property——

"Mr. WILLARD. Yes.

"Mr. LYON. Is that loaned by people without there being back of it, at least in their minds, an increase in the equity?"

"Mr. WILLARD. I hope not. The bonds that have been sold have in all cases been approved by trustees on ample showing made to them that the property has been improved sufficiently to justify that increased issue of securities.

"Mr. LYON. Then, if your bond issue has increased, as the record shows it has, it indicates there is also an increase in the equity of the Baltimore & Ohio greater than the amount represented by the increase in the bonds?"

"Mr. WILLARD. I do not know what you mean by 'the equity' as you use it now.

"Mr. LYON. When I go to borrow money on real estate, the question always put up is, 'How much equity have you in the property?' That determines the amount of the loan, 50 or 60 per cent. I can not go out next year and borrow 70 or 80 per cent on the same property.

"Mr. WILLARD. No.

"Mr. LYON. Unless I have made some improvement or put some money into it.

"Mr. WILLARD. Yes.

"Mr. LYON. Is not that true of the railroad, or is it true of the railroad?"

"Mr. WILLARD. I am afraid I do not understand your question now. But my contention has been that we ought to increase the equity, as I understand you to mean, by the issuance from time to time of capital stock.

"Mr. LYON. Yes.

"Mr. WILLARD. That would increase the value of the property above the mortgage bonds. Now, we are not, so far as our capital stock represents the situation, keeping our equity up with the bonded indebtedness as we ought to. In other words, the properties of the Baltimore & Ohio—the railroads as a whole—show constantly an increase of debt and a decrease of equity. That has been going on for some years in the Baltimore & Ohio and with the others.

"Mr. LYON. Then this increase in bonds has come about without an increase in equity; is that it?"

"Mr. WILLARD. Without an increase in the issue of capital stock.

"Mr. LYON. That is the very point I wanted to make; at least, what I wanted to find out. The question of whether you have an equity or not is not dependent upon the issuance of stock. The equity may be there; it may be represented by stock and it may not. Now, is the equity in the Baltimore & Ohio?"

"Mr. WILLARD. If it is, it is not worth very much to us if we can not convince the people of it to the extent they will take our stock, and we can not sell our stock at par."

Testimony of W. H. Williams, third vice president Delaware & Hudson Co., in the Five Per Cent case:

Page 4035:

"There has been already presented to the commission evidence showing the decline in the ratio of capital stock to total railroad securities. According to official reports capital stock was but 44.10 per cent of total capital issues in 1910, compared with 48.85 per cent in 1903.

"With respect to the eastern railroads the decrease in ratio of stock to total securities during the same period was from 50.43 to 46.17 per cent.

"It should be noted that in 1913 the savings banks of the United States reporting to the Comptroller of the Currency owned about \$821,500,000 of the railroad bonds, against about \$708,000,000 held by all other banks, trust companies, etc. These figures serve to suggest the serious effect upon these important agencies for the encouragement of thrift and the irreparable damage to their depositors that would follow further depreciation of railway securities. If the margin of receipts over expenses, taxes, and interest should continue to diminish so that the factor of safety required by the savings bank laws in bonds which those banks are permitted to purchase should disappear, not only would the savings banks be compelled to cease purchases of the railroad bonds affected but they would be obliged eventually to sell those they now possess. And in this compulsory marketing of railroad securities they would, in effect, acknowledge that they were disposing of these securities because their quality had become doubtful. The prices that would be realized under such circumstances would, necessarily, be little better than panic prices, and the injury to savings bank depositors would be irreparable. It is plain that the failure to earn any return on new capital, if continued, must lead speedily to this precise result, for it tends to produce a condition in which the payment of dividends would be impossible. Further, it should be noted that a number of companies whose bonds are already in the savings bank class are not able to obtain any new capital by the issue of stock. They are compelled to resort to heavy bond issues, and since most other companies have no available means for new financing other than the sale of bonds, the market for securities afforded by savings institutions is threatened with elimination. This is another condition which is tending constantly to enhance the cost of new capital to the railroads. It is, therefore, essential that railroad earnings shall be large enough to place the companies in a financial position that will enable them to obtain necessary new capital by the issue of shares of stock and at least to maintain the position of the existing issues of bonds that are now available for savings bank investment."

Page 4045:

"An analysis of the New York Stock Exchange listings illustrates the recent enforced tendency on the part of the railroads to do new financing through bond issues rather than through the sale of stock. Thus, since 1909 the proportion of railroad stock to total railroad listings has constantly decreased. For the first six months of 1913 railroad stock listings amounted to 33.38 per cent compared with bond listings of 66.62 per cent. This proportion should be compared with that relating to the listings of industrial bonds and stocks. In the first six months of 1913 industrial listings consisted of 91.43 per cent of stock and 8.57 per cent of bonds. This would seem to indicate that the industrial companies are enabled to do their financing through stock issues, whereas the railroads are now restricted largely to the issue of bonds."

#### RAILROADS: FINANCE AND ORGANIZATION.

[By William Z. Ripley, Nathaniel Ropes Professor of Economics in Harvard University.]

Page 109:

"The complete reversal of the tendency away from borrowing of the lean years 1893-1897 is manifested by the foregoing table. The two forms of capital representing ownership and indebtedness, respectively, remained about even until 1902. But year by year after the panic of 1903 bond issues predominated. By 1908, 53 per cent of outstanding capital was represented by such mortgages. The next four years witnessed little change until 1912 set an even higher record in this regard. In that year bond issues exceeded capital stock per mile of line by nearly one-third. For the railway net of the United States gross stock issues equaled \$35,000 per mile of line, as against \$46,000 in bonds.

Otherwise stated, there were outstanding about \$11,000 more of bonds per mile of line than of share capital. Within the period 1900-1913 railroad stocks increased by 45 per cent. while the funded debt grew by about 80 per cent—nearly double the rate. Thus it has come about that, despite the relatively low rate of return upon bonds, fixed charges of one sort and another now absorb about three-fifths of gross income."

Page 117:

"Full appreciation of the danger of overborrowing is evident among more conservative railroads. Large issues of capital stock were put forth at the end of 1909 by the Pennsylvania, New York Central, and Chicago & North-western. Some of these companies, like the New Haven, were already water-logged with bonds, until they had violated the provisions of Massachusetts law aiming to keep funded debt less than share capital. Some were so rapidly expanding their earnings that a broader dividend basis was evidently warranted, or was at all events expedient in order not to excite public comment by high rates of earnings upon the existing capital stock. And pending Federal legislation contemplating an official oversight and control of all capital issues in future probably was not without effect. Furthermore, the increasing difficulty of selling long-time bonds at a low rate of interest was influential at least until 1912 in encouraging resort to stock whenever possible. To put forth bonds at high rates, as will shortly appear, operated to depreciate the quotations of older issues. The difficulty of issuing bonds was due partly to general distrust among investors of the railroad situation under rising costs of operation and fixed returns under Government regulation, partly to the existence of high rates for money the world over, and partly to the fact that excessive borrowing by the low-grade railroads were slowly breaking the back of their credit. But, on the other hand, in order to sell stock it must generally be put forth above par; and, in addition, in order to make a successful appeal to investors the prospective dividends must exceed the rate of return from competing bond investments. Altogether, the lesson to be drawn from this unfortunate situation is that the time to limit borrowing must be prior to the first overbalance of indebtedness. A considerable departure from an equivalence of bonds and stock commits a weak company irretrievably to continued loans as a resource. Borrowing as a policy acquires a deadly momentum with the course of time. A downward path, leading inevitably toward bankruptcy, is apt thus to be entered upon."

Page 120:

"By and large, the principle seems well established that the bonds of a railroad ought not normally to exceed 40 per cent of its entire capitalization."

#### RAILROAD FINANCE.

[By Cleveland & Powell.]

Page 39:

"*The corporation's interest in the choice of capital issues.*—The form of contract or obligation incurred for capital which is best suited to the interests of the corporation is the capital share. A certificate to a shareholder is an evidence of proprietary right to participate in the benefits of the trust estate, the legal title to which is held by the corporation. There is no obligation upon the part of the corporation to pay any amount at any time. There is no contract for the return of capital contributed so long as it is needed by the corporation, and no obligation even to pay dividends except as they may be declared by the board of directors. The directors could not return the capital except after formal notice and by following legally prescribed procedure for the reduction of capital; they may not declare dividends except out of unappropriated surplus.

"*Advantage of issue of shares.*—The advantage to the corporation of this kind of contract is at once apparent. The period during which capital will be needed is the life of the corporation; the obligation to the shareholder to return his capital does not mature until the affairs of the corporation are wound up. The ability of the corporation to serve the public depends upon the adequacy and uninterrupted use of its capital, whether this be in the form of property, equipment, or working funds. The right of the shareholder to distribution of surplus is conditioned upon the judgment of the directors as to the capital needs of the corporation. The immediate cause of financial difficulties of any corporation is inability to meet contracts to pay money when due; the contract to pay the

shareholder never becomes due except by act of the directors of the corporation itself, and even the directors may be restrained if it appears that such act will lead to financial embarrassment."

In The Five Per Cent case, 31 I. C. C., 351, 382 (1914), is the following statement:

*"Interest rates and reduction of bonds to stock.*—In recent years new capital has been raised largely through bond and note issues, so that the percentage of railroad indebtedness to capital stock outstanding has risen largely, as appears from the following table:

*Comparison of property investment and capital obligations.*

	1900	1913	Increase per cent.
Property investment.....	\$3,952,000,000	\$6,281,000,000	58.93
Capital stock.....	1,762,000,000	2,560,000,000	45.29
Funded debt.....	2,120,000,000	3,837,000,000	80.64
Total capital obligations.....	3,882,000,000	6,390,000,000	64.59
Ratio of capital stock to capital obligations.....	45.39	40.06	.....

"In advances in rates—Eastern case, 20 I. C. C., 243—it is stated that the average rate paid on their funded debt by all the carriers of the entire country was 4.69 per cent in 1895, and that in 1909 it had been reduced to 3.90 per cent, a saving, computed upon railroad indebtedness of the latter year, of \$77,000,000. A comparison of the years 1900 to 1913, made from the exhibits offered by the carriers in this proceeding, shows that the average rate of interest paid by the lines in official classification territory on their indebtedness in 1900 was 4.55 per cent and that it was 4.07 per cent in 1909, this being also the rate in 1913. The average interest rate for each year of the period was as follows:

*Interest rate on funded debt, 1900 to 1913, inclusive, for 35 systems of official classification territory.*

[Compilation made from carriers' exhibits.]

Year.	Funded debt, including notes issued for capital obligations.	Interest deductions.	Per cent of interest deductions to funded debt.
1900.....	\$2,120,230,506	\$96,457,363	4.55
1901.....	2,221,845,198	98,649,904	4.43
1902.....	2,291,774,077	101,626,839	4.43
1903.....	2,381,083,640	101,051,534	4.24
1904.....	2,587,784,265	104,290,479	4.03
1905.....	2,791,878,258	111,758,155	4.00
1906.....	3,105,508,551	118,256,568	3.81
1907.....	3,313,125,765	131,747,556	3.98
1908.....	3,523,788,942	142,688,953	4.05
1909.....	3,587,528,514	145,527,139	4.07
1910.....	3,642,870,926	146,792,461	4.03
1911.....	3,685,496,675	149,492,443	4.06
1912.....	3,772,299,147	150,697,110	4.00
1913.....	3,820,753,251	155,878,950	.07

Amounts in this column for the years 1900, 1901, and 1902 include only "Interest on funded debt." For other years carriers' exhibits show "Interest deductions" as a total, which apparently includes certain interest other than interest on funded debt.

"We have thus an increase in the ratio of railroad indebtedness to outstanding capital stock, and in recent years a slight increase in the average interest rate coincident with an increase in the operating ratio. We have a decrease in the ratio of net operating income to property investment, despite the fact that the increase in gross revenues has been nearly twice as great as the increase in capitalization."

Mr. THOM. What I would like for the committee to do is to read over those questions, and when the witnesses go upon the stand to bring out from them testimony in respect to those particular features of the inquiry, if the committee shall deem that it is wise and pertinent to do so.

Mr. ADAMSON. Mr. Thom, I think that when that time comes the committee will suggest, if you do not offer to do it yourself, that you have the right to ask them any questions that you choose.

Mr. THOM. I would be very glad to do so. I did not know that I would have that privilege.

Senator UNDERWOOD. Mr. Chairman, I do not like to interrupt, but I hope that remark that has just been made by the gentleman from the House will not go uncontroverted, because I would seriously protest, myself, having either side here represented by counsel.

Mr. ADAMSON. I did not mean that.

Senator UNDERWOOD. I hope there will be no decision made upon that question unless it is considered in executive session.

The CHAIRMAN. That matter will be considered in executive session.

Mr. ADAMSON. I did not mean that there should be any counsel, but I do mean that any American citizen who wants to ask a question can, by permission of this committee, be allowed to ask it.

The CHAIRMAN. Will you proceed, Mr. Thom?

Senator CUMMINS. May I ask you a question, Mr. Thom, with regard to the title of this pamphlet, "Subjects which economists and publicists will be asked to consider"?

Mr. THOM. Yes.

Senator CUMMINS. Asked by whom?

Mr. THOM. Me. I wrote them this letter. I accompanied that with this letter.

I was in position, if I may pursue that matter a little further—of course I was in the position of not being able to reach and to confer with the vast number of economists all over the country, and there were certain subjects which I wanted them to consider. Therefore, I had them written out and printed in that way, and accompanied them with the letter which I have just read.

Senator CUMMINS. It means, then, that these are subjects which you asked them to consider?

Mr. THOM. Yes. I stated that in this letter, that as counsel for the railroads, there were certain subjects I desired to call to their attention, and ask them to consider, and I sent them in that way, Mr. Chairman and Gentlemen.

The CHAIRMAN. Mr. Thom.

Mr. THOM. By the joint resolution, which has been read into the record, this committee is required to make a comprehensive study of the whole subject of transportation. Twenty-nine years have now passed since the policy of governmental regulation was adopted by the United States. The President, in his message to Congress on the 7th of last December, suggested the wisdom now of taking a new assessment, as he expressed it, of the facts and conditions relating to transportation, which should be made in the light and with the help of these 29 years of experience.

At the outset of your deliberations it may be helpful to you—it certainly will be helpful to me—to review some of the historic facts relating to the adoption of governmental regulation. We must note

at once the vast and fundamental difference between the genesis of the system of regulation of transportation and the genesis of the system of regulation of any other commercial agency by the United States. For example, let us take the establishment of the national banking system. The system of governmental regulation which was adopted in respect to that came into being with the establishment of the banking system and as a part of a constructive program to build up efficient banking agencies by the National Government. The system of regulation of railroads has an entirely different history. Railroads did not come into existence by the fiat of Government, as a matter of national policy, but the railroads were originated as a matter of private enterprise and initiation in obedience to the appearance of economic wants, and came in a desultory way. They were more than welcome by the public. On every hand there appeared a public policy which was unmistakable to set no limit to the matter of encouragement, if only the railroad facility could be provided. The most liberal charters were granted, subsidies were voted by legislative bodies, lands were granted in millions of acres, all to encourage the establishment of railroad facilities. There was no limitation in most cases put upon the powers of these chartered agencies in respect to what they might do in regard to their charges, but if a limitation was put, it was put so high that it did not amount to a limitation or a practical matter.

Now, the result of that was to create the impression, I may say, to create the conviction on the part of the man who invested his means in a railroad, that he was investing it as he would in any other private enterprise. No other conception was in the public mind, because the need for it had not then appeared; no other conception was in the mind of the investor; he had no reason to have any other conception, as he was not only welcomed but urged by the public to enter upon this field of human industry. Now, what was the effect of that? Examining human motives, watching the operation of human interests and human forces, what was necessarily the effect of that, in the first instance, upon the conception of the investors in these properties as to their rights? Inevitably, it produced the impression that they had engaged in a private business, and that they owned it and could use it for their private ends. Now, time went on. We all appreciate that that conception was based upon a fundamental and a far-reaching error; we understand that now, but at that time nobody understood it; nobody advanced it; nobody insisted on it; and then these people who had made these railroads commenced to use them for their private purposes; they commenced to sell at wholesale cheaper than they sold at retail, like any other man controlling his business even now does; they commenced to make different terms to different parties and to different communities; they commenced to exploit them in a financial way as private enterprises, and, gradually, the great public mind awoke to the fact that abuses were creeping in, and there came to be here and there demands that that sort of favoritism, which made the prosperity of one community and destroyed the prosperity of another, ought to stop. As the abuses multiplied and as the hurtful condition of the unregulated use of this tremendous agency began more and more to appear, the public feeling on the subject arose in like pro-

portion, and there soon became a demand on the part of the public that these abuses must cease; that the thing of inequality of the terms on which men and communities could do business must be abandoned, and the conception took hold of the public mind that there was, necessarily, a public duty imposed upon this tremendous agency of development and commerce. I have heard it contended, as you have, that the public right in respect to these properties grew out of the bestowal of the right of eminent domain. I have never been able to accept that view, for a moment's reflection will show you that if you buy every foot of your right of way and build upon it a railroad, that there must be limitations of ownership and use upon that, just as much as if you had used the right of eminent domain. The foundation of the public right, to my mind, is not the bestowal of the right of eminent domain, but it is the possession of a tremendous agency, powerful enough to make and unmake prosperity, and powerful enough to affect national destinies. No matter what its form, no matter what the privileges that were bestowed—whether they were given or bought—the result of the existence of an agency so powerful as this would be to impose upon it, from the very necessities of the case, a public right in respect to its use and in respect to its ownership.

Now, we can well imagine the effect of the clash of those principles, the conflicting conceptions of the use of these properties, the investors on the one side naturally clinging to their view of private ownership and resenting a denial of the full use of private property. On the other hand, the public having once seen the operation of these forces would necessarily continue to insist on that point of view, and the judgment and the conscience of the world has come to appreciate that the public view of that question was the sound one. But there was a controversy; there was a conflict of conceptions; there was a conflict of interests, and it came to be a great political question. The owners of these railroads on the one hand fighting for what they conceived to be their private rights of property, and unwilling to accept in any degree, even a qualified degree, the right of public regulation; on the other hand, the public insisting that these agencies must be regulated and controlled or they would become larger than the Government itself, and so the fight went on. It went on relentlessly and without yielding on either side, and when the victory came it came on the side of the public conception of the public character of these instrumentalities of commerce; but it was a victory won in anger; it was a victory which was the outcome of fierce conflict, and the terms that were imposed were the terms of the victor upon the vanquished, and reflected merely the purpose to apply in the principles of the system of regulation the forces of correction and punishment. So that this system, which was established by the National Government 29 years ago, was the outcome of this bitter conflict of policies and views and conceptions, and looked only to what the public had in its mind, and that is the eradication of abuses.

I call your attention again to the fundamental difference between that situation and the situation in regard to the regulation of banks. In the matter of the regulation of the banks the system of regulation was a part of a constructive program. In the matter of the regulation of the railroads, regulation became a part of a destruc-

tive program, destructive of abuses, and intended merely to protect the public interests as they then appeared.

Now, gentlemen, we are confronted to-day with the question whether it is possible to have that policy of correction the permanent policy of this Government. You, with your tremendous responsibilities upon you, have to consider the question whether now the system of correction has gone far enough for you to take stock and to inquire whether there must be introduced some other principles beside the principle of correction in your system of national regulation. You must inquire, whatever may be your determination upon that question, whether you may think that the processes of correction have gone far enough or not, you must further consider whether, if they have not gone far enough, there is corrective power enough in this system of regulation to deal with all that is left of abuses, and whether under that condition the time has come for you to introduce principles of encouragement, of helpfulness, and of constructiveness in this system of regulation.

Gentlemen, I shall discuss this question not from any altruistic standpoint but with the acceptance of the standards that whatever I say and whatever I may propose must come up to the standard of the public interests, must be measured by that standard and satisfy or it will be discarded. I will not make any plea to you for private interests. I appreciate that I stand here with no more right to ask the exercise of your governmental powers in the protection of my private interests if they are in a railroad than I would have if they were in a farm or in a factory or in a mercantile enterprise. My private interests have no place here. The things that I say and the things that are proposed must be measured by the standard of the public interests and must be determined by the standard of the public interests, and I shall make no other argument.

Now, what is the public interest in respect to transportation? Let us pause for a moment and get that in our minds. As I read the needs of the public they are to be assured of sufficiency of railroad and transportation facilities now and in all the future, and, of course, to be assured of them on reasonable terms; but if it becomes a question between high charges and the existence of these facilities, I suppose there will be no dissent from the fact that the public interest is, after all, in having the facilities.

I can not forget that I was present in this room just before the 1st of last September, when the Senate Committee on Interstate Commerce was confronted with the menace of an immediate suspension of all the transportation facilities of the United States by a threatened strike, and in the presence of the possibility of that suspension there was no thought in any man's mind except of continuing the use of those facilities by the public. I heard no suggestion of the rates or the charges. I only saw that the attention of the Congress of the United States was directed to the fact that there was impending a great national catastrophe which would involve the suspension of communication between persons and communities throughout the Union, and that the whole attention and the whole power of Government was directed toward finding a method by which those facilities could be continued. I read in that incident the value that the public put upon transportation facilities. Nor

can we close our eyes to the fact that at this moment commerce is being impeded and in some cases halted by a lack of cars to carry the freight that is waiting upon the sidings throughout the land, and how the attention of everybody is now directed to the fact that that again is a catastrophe which must be averted, so that, as I see the public interest, it is that there shall be preserved in some way a transportation capacity equal to the public needs, and in that connection I call your attention to the fact that whether or not you think that the great transportation structures of this country are still too high, or right, or else too low, that you must, it seems to me, conclude that the existing powers of regulation are adequate to deal with that question of exorbitant rates.

We have no controversy any longer about a lack of power to deal with rates that are too high. Some think that there are none too high, others disagree with that view, but all appreciate that the existing governmental systems are adequate to deal with the question of the level of rates, to the extent of preventing them from being exorbitant. So that we must come back to this question of whether or not I am right in insisting that the fundamental and essential interest of the public is now in the great question of whether or not existing systems guarantee to the public an adequate supply of transportation facilities, not only for the present, but for the future. Some gentlemen might say that there have been great railroad abuses; that there have been great errors of railroad judgment; that there have been great crimes in financial matters of some of the railroads, and attempt to present that view to this committee, and to say that the difficulties under which the railroads now labor are caused, at least to some extent, by the faulty management of the railroads themselves.

Gentlemen, I ask you to confront that proposition with this question: What remedy does that theory propose for the needs of the people in respect to the continuance of railroad facilities? The advocate of that view has turned his face to the past. He is insisting on your shutting your eyes to the needs of the future by trying to arouse your indignation in respect to what he conceives to be the errors and misdemeanors of bygone days, or, if he pleases, of present days; but what did he do? What did he propose as a means of providing for the future? At last the question will be, and I will try to define the issue in such a way that it may be accepted by all of us, no matter what our views, the question will be this: Those who propose a change in existing methods must make their appeal to the judgment of the people upon the proposition that existing methods do not assure to the public the supply of transportation facilities that the public needs, and those who oppose any change must make their appeal to the public judgment on the proposition that existing conditions, if honestly administered, do assure to the public an adequate supply of transportation facilities. Now, is not that a fair statement of the issue which we should debate? Is not that an issue which must control the decision of this question? The continuance of the certainty of adequate transportation facilities is paramount and must control the ultimate decision of this question. Gentlemen can not be heard who appear here, jealous of local rights and jurisdictions, unless they can show that under those local rights and jurisdictions the public needs, present and future, are protected. No.

theoretical view of the proper distribution of governmental powers can have any weight with you or with the judgment of the people of this country, unless under the proposed distribution of governmental powers adequacy of the transportation facilities of the country is assured. No private interests, no cherished theories of government can be permitted to enter here unless they come with a guarantee in their hands that what they propose will protect the public in the matter of transportation facilities.

Therefore, gentlemen, I shall debate this question on the theory that I must sustain the propositions which I shall advance by showing not only that the public interests are promoted by them, but that they tend to give greater assurance to the public of the continuing sufficiency of transportation facilities in this country. May I not fairly ask of anyone who shall oppose my views, or who shall have any counterpropositions to make, that they accept the same conditions of debate? May I not fairly assume that I have the approval of the public judgment in trying to make this discussion turn upon that one question? I do not believe that if you gentlemen conclude that there is now a sufficiency of transportation facilities, that existing policies adequately assure them for the future, that you would be inclined to any change, and I do not believe that if you are convinced that present systems menace the continuance of adequate transportation facilities, and that something must be done to assure them to the public, that any other idea will hold you back. I believe that is going to be the dominant thing in your minds when you come to perform the great duty which has been intrusted to you.

Now, let us inquire into that question. Have there been no signs which an intelligent mind can not mistake of a menace to your transportation facilities? Has nothing occurred to arrest your attention? Have we learned no lesson from what happened in 1907, when there was a substantial increase in the business offered to the railroads, and lack of yards, lack of tracks, and lack of cars brought on the "panic of plenty" in that year? Have we forgotten that the panic of 1907 was not a panic of scarcity, not a panic of failures in business, but was a panic brought on by the inability of communities to deal with one another, because the railroad facilities were inadequate? Congestion everywhere; not yards of sufficient capacity for trains; not tracks sufficient to carry them; not cars sufficient to transport the business of the people. There, in that year, in the midst of that plenty came panic, due to those factors. Have we forgotten the fact that in this last spring it became necessary to put embargoes upon the receipts of business in many parts of this country, including your own country of New England. Senator Brandegee, due to the fact that you did not have yards enough and terminals enough to handle your business? And that embargo was of sufficient importance to cause a member of the Interstate Commerce Commission, Commissioner Clark, to go and take personal charge, with a committee of railroad men, of that situation and try to work it out, and it remains unremedied to this day, because the fundamental want of yards and terminals and facilities has made it impossible. Do you forget the fact that at this present moment there is such a scarcity of railroad equipment that the commercial interests of the country have risen in arms and the Interstate Commerce Commission is conducting an investigation in the city of Louisville through one of its members in

order to find a way of supplying with cars the commercial needs of this country?

Are we justified in taking no note of the fact that in the last year there has been a smaller railroad construction than in any year, leaving out the Civil War, since 1848, and that in the last year there have been less than 1,000 miles of new railroad constructed in the United States? In a field which has heretofore been an inviting field of private enterprise, in a field that has found heretofore at every hand investors who are seeking to invest their surplus means, we found in the last year that railroad construction into new territory has been, in effect, arrested, and that nothing is going on in the way of carrying this pioneer of progress into the untouched wealth of the American continent.

Do we appreciate the fact that this suspension of railroad construction may be the cause for which we are all seeking of world-wide disaster which has come in the high cost of living? Political parties have entertained different views with respect to the cause of high cost of living. One of the great parties, and perhaps both, at one time felt that it was to be found in the hurtful combinations of productive interests, and antitrust laws were adopted as a means of meeting that unfortunate condition. Another one of the great parties found the explanation in the tariff and came into power with the proclamation that if they could be allowed to lower the tariff that living cost would likewise disappear.

Both have been tried, and the cost of living is going up all the time. Why not come back to consider the fundamentals of a matter of this kind? Why not come back and inquire what the quantity of supply has to do with the high cost of living? Why not come and inquire whether it is time for the policy of these United States to develop the rich agricultural and mining and forest reaches which it has and bring them in and lay them at the feet of human need? Why do we conclude that if we have the high cost of living with the wheat crop at a certain figure that we would have no lower if we could double the wheat crop? Why do we conclude that if manufactured implements are too high at the present time that we could not reduce them if we increased the supply of the raw material? Why do we conclude that it is proper national policy to abandon the hope of touching the great areas of productiveness and supply in this country and bringing them and putting them within the reach of human wants as a means of meeting the greatest problem with which the poor man of this country has ever yet been confronted? Are there no wheat fields yet untouched? Are there no mines yet unopened? Are there no forests yet untouched, to which we can go to increase our supply, and by increasing the supply in proportion to the demand do something to reduce the cost of living? And yet, with that great and pressing problem upon us, seeking for some solution, we have by some force, by the operation of some conditions, put a stop to the construction of railroads in new and unprovided territory.

With that fact before us, can we conclude that the present railroad facilities are adequate to the needs of the public?

Another thing that we see—we note the fact that railroad construction has been suspended in this country not at the point of equal distribution of railroad facilities to the various States or the various

commercial communities, but it has stopped at a point where many of the communities of this country are far in advance of many others, where there is an unequal distribution of railroad facilities to the people having a common citizenship and common right in the United States. For example, we find that in the State of New Jersey there are 30.8 miles of railroad for every 100 square miles of territory, practically 30 miles. We find in Wyoming that they have 1.94 miles. We find in Virginia, where I come from, that we have 11½ miles. We find that in the State of the honorable chairman of our committee, Georgia, that they have 12.65 miles; that they have in Idaho 3.35 miles; that the average in the United States is 8.53 miles.

Are the people of this country to be satisfied? Will they long be content with the statesmanship which halts the provision of transportation facilities at that point of inequality?

I have had made a map of the State of Idaho as an example. I have had drawn from the railroad lines in that State parallel lines from 7 to 10 miles away, what is supposed to be a convenient hauling distance, to show the vast area of productiveness still left untouched, and I have had circles put upon the map to show the mineral areas. There appear upon it immense forest areas; there appear upon it the immense areas of arable land yet unsupplied with transportation facilities, all waiting for the enterprise of men to provide the carrier facilities essential to lay what that State can produce at the feet of the American people. I am having prepared similar maps which will be presented by witnesses in this investigation covering other States and possibly the whole United States, to show the regions to which American needs may yet apply for an increase of their supplies, and as a means of decreasing their cost of living.

Now, gentlemen, with those facts before you as to what has happened now to the people supplied at least nominally with transportation facilities, as to the failure whenever you put upon it the pressure of increased business, and as to the vast territories in this country which something is preventing from being supplied with transportation facilities, are we not safe in reaching the conclusion that the transportation facilities of the country are not now provided up to the point that the public needs require, and that there is no provision for the future which will assure them, under existing conditions, adequate transportation facilities?

It must not be forgotten that transportation is never a completed instrumentality. No railroad is ever finished except among a people that are dead, and as long as commerce grows so must transportation facilities grow, for the facilities of transportation set a maximum limit upon the productive capacity of the people.

They can produce no more, and they will produce no more, than they can get to market, and when you limit your transportation capacity you limit the capacity of your people for productiveness and for usefulness in human endeavor. They can not stand still. Even the Pennsylvania Railroad, with its magnificent facilities, is not a completed property, and much more so, in all the territory from which I come and from which most of you gentlemen come, the transportation facilities on which your people rely are not completed, and unless the communities perish they can never be completed. They must go on growing as the days go and as human genius grows and human interest grows. They must go on growing and keep pace

with the rest of the world, or you put the hand of paralysis upon the people who must have those accommodations or die. They will have to be provided.

How is this increased transportation facility, this constant growth in transportation facility, to be provided? Is there anyone who dreams that it can be supplied out of earnings? Is there any man of affairs anywhere who believes that you can continue to build the needed transportation facilities out of earnings? If so, he needs to open his eyes, because that is not even a remote possibility. It is impossible to build, to renew, to extend, to amplify, and to increase the transportation facilities of this country without the constant input of new money.

It is necessary, therefore, for the American people, in answer to their supreme needs for efficient, adequate, and constantly growing facilities, that there shall be a guaranteed means by which the provision of the facilities may be insured. There must be an assurance, not in the interest of the railroads but in the interest of the public—there must be the assurance of a constant supply of new money, in order to increase, as the public needs require, the transportation facilities of the country.

Now, how is that new money to be provided? Manifestly, if these systems of railroads are to remain in private hands, and if they are to look to private individuals to supply these means, there must be established such a credit on the part of the transportation facilities of the country as will attract the private investor.

I pause for a moment to ask you gentlemen to consider whether such a credit is simply the private affairs of the railroads? Is it a matter in which alone the present owners of the railroads are interested? Is it a matter in which the present owners of the railroads are interested to anything like the extent that the public are interested? Of course, it is to the interest of the private owner that his property should flourish, but at last, when confined within its present limits, he can do something with this proposition, or in the final event the Government can take it over and pay him for it. But the public requires that there shall be an adequate credit, because the public requires that there shall be adequate growing transportation facilities. If the credit of the railroads breaks down or is insufficient, then the public is denied the opportunity of growth and expansion and of an avenue for the current of its commercial business.

So the question of railroad credits is not a private interest. It is a public interest. It is a necessity of the public. If it fails to exist there are but two things to happen. One is that the country will be blighted by an insufficient supply of railroad facilities, and the other is that the Government must take them over and supply the credit themselves, and if the Government ever does take them over, and if the Government ever does become an operator of these railroads, it will be because this question of railroad credit is so absolutely controlling in the public interest that the public must take them over in order to supply the credit.

No more convincing argument can be made to an intelligent mind that railroad credit is a matter of great controlling public interest than the fact that if ever there comes a system of Government ownership, it must come for the purpose of supplying the credit which private owners can not supply to it.

Now, let us look at this question of railroad credit and its present condition. Is it on a safe basis, so far as the public is concerned? Leave out, I pray you again, any consideration of private interest. Is the railroad credit of the country on a sufficiently sound basis to satisfy the public needs? Let us look at the facts. I suppose that there is not one of you who has not come to realize, in the conduct of your personal affairs and in your observation of commercial conditions, that business can not safely be conducted if dependent entirely upon borrowed money. The man who goes into business and borrows all his capital is not considered a preferred risk in the commercial world. The man who gets all he has by mortgaging his property and putting on fixed charges is going to have less and less credit as his mortgages increase and as his fixed charges grow, and as he comes closer and closer to the time when some reversal in business may prevent the payment of his interest. That rule is as applicable to a railroad as it is to an individual. A railroad can no more go on exhausting all its assets by mortgages and loading up all its operations with the application of fixed charges than can an individual. There comes a point in railroad credit, as in individual credit, where the line of safety is found between the input of capital which can be borrowed and the input of capital which should be made by the owner of the property, and be evidenced by stock without fixed charges. The accumulation of fixed charges, the necessity to pay them, whether the earnings are sufficient or not, constitutes a charge, if this line is exceeded, which may mean, in the end, default and bankruptcy and failure.

It is important, then, for us to inquire where that line of safety is, and whether it has been exceeded in American railways. We shall attempt to develop that by expert evidence before you in the course of these hearings, to show where the line of safety is considered to be by the expert financiers of the world. But there is that line of safety, and the question which you gentlemen will be interested in considering is whether that line of safety has been exceeded, or is in danger of being exceeded, and whether thereby the financial structure of the American railroads is now menaced.

I believe you will find that a great many of these economists and financiers will say that that line of safety is 50 and 50. Some of them, doubtless, will put the percentage of borrowed money at a higher figure, but none has come to my attention; no contention has come to me that the borrowed money ought to be higher than 60 per cent and 40 per cent contributed by the owner. That will be a matter of investigation, of expert investigation before this committee, as to where that line of safety is.

But, taking it for the purpose of my illustration at 60 and 40, we have the history of railroad financing in this country within the last 16 years on this point as follows:

In the year 1900 the bonded indebtedness, the indebtedness that was accompanied by fixed charges, constituted only 49.78 per cent of the entire capitalization, and on that capitalization, in that stock, were the bonus stocks which were at one time resorted to as a method of American financing. In the year 1914 the percentage had grown to 61.80 per cent, and the information I have, but I state this subject to verification, is that in 1916 it is 65 per cent.

Gentlemen, is there nothing in that statement to make us pause and inquire where we are tending? Is there nothing there to make us pause and study the question of whether or not existing systems of regulation sufficiently encourage investment to induce the investors to buy the stock of railroads and thus establish the proper equilibrium? If we do not, where are we tending? Where will that growing percentage lead us? Is there any man brave enough to advocate the proposition that the railroads must hereafter be financed entirely by fixed charges, nor must not the intelligent statesmen and economists of the day say that there is this line of safety and that upon the evidence you will find that it has already been exceeded? But whether it is exceeded or not the tendency is so rapid, the increase of fixed charges in its relationship to the amount of stock is going to be so great that you must stop and look at this tremendous danger that is appearing upon the horizon.

We shall attempt to show to you again that in order for a railroad to finance itself by stock, that there must be reliable earnings of the railroad sufficient to make the investors certain of a return of 6 per cent, with 3 per cent surplus. That is a very small estimate, as will appear from the evidence of these experts, which will be presented to you. That in order to put stock out at par, the earnings of the company which wants to issue the stock must be at least 6 per cent in the way of dividends and 3 per cent in the way of surplus to protect the investors.

What is the condition of American railroads under that test to-day?

By this test 39 railroads, having a mileage of 47,363 miles, could probably be financed by the issue of stock at par. Under this test 137 railroads, having a mileage of 185,219 miles, could not be financed by the issue of stock at par.

All the people of this country do not come from the territory served by rich railroads. Some of us come from a territory where the railroads are not in this fine financial condition. We need our railroads as much as the rich sections of the country need theirs, and when we see that 185,000 miles of railroad in this country can not respond to that test of financing themselves against the 47,000 that can, I ask you whether or not a condition is not presented to the American people which would make them pause and ask where we are going?

Let us consider some of the other conditions which are at present affecting American railroad credit, and that we must now confront in respect to this matter of railroad credit.

What is the territory that is furnishing money to railroads? Is it the whole world? Is it all of the United States? Take my own territory of the South; through the income-tax returns we have been recently able to trace the ownership of a block of \$100,000,000 of bonds of a railroad company running through the vital points of the South, and of that block of \$100,000,000,  $3\frac{1}{2}$  per cent are held in the South.

I have recently asked an intelligent associate of mine to go through the South and talk with our people with respect to the investment in railroad securities, and he comes back to me with the report, which we shall verify by the presence of bankers from that section upon this witness stand, that there is comparatively little demand for investment in railroads in the South; that there are other investments which are more attractive to those people.

The same is true in a very large extent of the western part of the country. There is a great insurance company in one of the Western States, the investments of which in loans on farms amounted to \$183,000,000 as against \$75,000,000 in railroad securities, and they have stopped investing in railroad securities. They have never made a loss on the farm loans, while the depreciation in railroad securities has amounted to such a substantial figure that they have gone out of the business. We shall have on the stand here to tell you of the question of railroad credit in the West, witnesses who can verify this statement.

So we have two great sections of this country that practically withhold their credit from the railroad investors. Of course, not all of it, but to a most substantial extent.

Now, to what sections have we been able to apply? We have been able to apply to the eastern section of the country and to Europe. But the war in Europe has made of those people borrowers instead of lenders. They no longer are taking securities of American railroads, but they are sending them back and disposing of them on the markets of America. Not only is that the case to-day, but when this war is over Europe will still be a borrower in order to build up its waste places, and will not be a substantial source of supply of funds to American railways.

So that we are reduced to the small financial sections of this country, which is perhaps best described by the "East," and when we inquire into the condition of railroad credit in the East we find that representative bankers in such cities as Boston are advising their clients, when they come and ask them about investments, not to go into railroads, and more than that, we are finding that the clients, when they come and want investment, and a railroad security is suggested, decline to take it. Now, that is a tendency which we can not ignore.

Gentlemen, I wish you to bear in mind that I am not contending here that gilt-edge railroad securities, constituting first or prior liens, have no market, because they have, and they have a pretty good one. Outstanding mortgages of high order have a very good standing in some restricted markets of the country, and can be sold under advantageous terms; but are you interested in that? Are you interested in how outstanding first mortgages sell, except in an indirect way? Your problem is not that; your problem is whether or not the railroads of the country have unencumbered assets, have sufficient margins of equity to enable them to use them as a basis of getting new money into these enterprises. That is your problem; that is the railroads' problem. What is there left, you will ask, to bring new money into these railroad enterprises, in order that they may perform acceptably their public functions, and may adequately provide for the growing commerce of this country? That is your problem; that is the national problem; that is the public problem. What can we do? What have we left that will enable these railroad companies to meet the thing that is essential in the interest of the public, to raise the amount of money that will supply the facilities which the public needs absolutely demand? Every security that is now out upon the markets might be more desirable than any other class of securities—every one of them might be in the highest demand, but they bring no money. What they have brought has already come.

The practical problem is to get the new money that these facilities require, and we have got to look at the assets of these companies and their earning capacity, in order to see whether what is left furnishes a guarantee of the future of these American railroads. So let us not delude ourselves with the idea that we can find railroad credit reflected upon the quotations of the stock exchanges in respect to bonds already in the hands of the public. That gives no picture of the kind of credit that you are inquiring into and that your public is interested in. That may have an indirect bearing as indicating that if those securities are worth so much perhaps there are others to come behind that will still be saleable; but, at last, your inquiry is as to the condition of what is now available to offer the public when you ask his investment, and whether it is sufficiently attractive to get it. And you must realize that you are offering now junior liens on all these railroads, or you are offering stock which is without a lien. You see the condition of the stock; you see the condition of disproportionate issue of bonds, as compared with stock, and you see—I hope you see—that there is a real problem for the statesmanship of this country to consider in the question of whether or not existing conditions, whatever may be their cause, are such as to give a guaranty to the American people that new money will be forthcoming as they need new facilities, and that there is a practical assurance that these new facilities will be provided.

You will likewise have your attention called to what are considered the superior attractions of other classes of securities. You will be told of why it is that investments are going in other directions. You will be told about the more attractive earning capacity of industrials. You will be told about the growing favor in municipal securities. Your attention will be directed to a vast area or avenue of investment newly created by an act of Congress, where the farm loan securities, practically indorsed by the Government—not in the way of financial obligation, but indorsed by Government approval—will come into the field as a great competitor of other investments; that those securities are tax free, and, as told to us by one of the bankers of Memphis, Tenn., that they will hereafter furnish a tremendous source of competition to any other class of investments, especially investment in railroads.

Your attention is invited, and will continually be invited during this hearing, to this, as a cause for the decline in railroad credit, and that is that under our governmental policy, the amount of the revenues of the carriers is not within the control of the owner. I am careful here to say that I realize that the amount of those revenues can not be, and should not be, in the hands or the control of the owner, free from governmental regulation, but when I come to discuss that part of the subject, I shall discuss what the regulation ought to be; not that there should be freedom from regulation, or absence of regulation, but the character of the regulation so as to increase public confidence.

We can not in this connection lose sight of the fact that the credit of the railroads is also affected by the power of labor to dictate its own wages, and by the consequent withdrawal from the control of the owner of the power to fix the level of his expense, and we are subject, as all are subject, to the increased cost of living—the difference between us and most enterprises being that we can not increase,

as we think proper, the amount of our revenues. We are like the Government clerk up here, with whom you gentlemen have to deal, whose income is limited, but whose market bills increase.

And then there is another consideration, gentlemen, which affects railroad credit, which in the calm and dispassionate atmosphere of this inquiry, I hope will be recognized and will be given due consideration. Railroads are, at least, a business enterprise; they must not be subjected, if they are to survive, to political management. We are just as dependent on the application of business principles to the business which we are intrusted with the obligation to make successful, as any other line of business, and we can not be subjected safely to political management, any more than any other business can be safely subjected to political management.

Now, I have adverted briefly, gentlemen, to some of the causes which are affecting adversely railroad credit. Is there nothing in that catalogue to arrest your attention? Is there nothing in the conditions which I have described to make you pause and say, "Are the interest of the public sufficiently safeguarded under conditions such as these? Is there an adequate assurance in the conditions which now exist that, through private means, the railroad facilities of the country will be at all times kept adequate to the country's needs"?

Let me ask you for one moment to put yourselves in the position of the investor. You, as an investor, can not be coerced; you must be attracted. That is a fundamental part of the problem of railroad management and of railroad regulation. As long as these instrumentalities are in private hands you can not coerce, but you must attract investors. Now, an investor who means to invest comes and looks upon the field. What does he see?

He sees, in the first place, that the subject in which he is asked to make his investment, is absolutely beyond his own control in respect to the revenues which it shall produce; that they are controlled by governmental authority, and they are not only controlled by governmental authority, but they are controlled by a governmental authority which is irresponsible for the results and which is so diversified that it can not be coordinated into one consistent policy of regulation. He finds not only that the revenues are limited by the power of government, but limited not by the power of a single government. He finds that the level of his revenues is not fixed by a standard which is consistent and which looks to, appreciates, and is responsible to the whole people, but by a diversified, uncoordinated and uncontrolled diversity of governmental authority; that while the standard of one State and the standard of another State—I mean of the National Government—may be high enough to guarantee the continued efficiency and sufficiency of transportation facilities, and from time to time to attract new capital to make his own input useful and valuable, that he can have no such standard as that applied, but that he must go not only to one source of regulation, to one standard of what the public requires, to one standard of what can be permitted in the way of the prosperity of the enterprise, but to 49.

Is there anything inviting in that to the investor? Is there anything to make him feel that "that is the place for my money"?

Again, we find not only can one Government add to the expense account but the 49 governments can add to the expense account.

Can they add to it with a limitation of the same principles or the limitation of the same standards, or can they add to it according to the individual and uncontrolled conception within the lines of confiscation of each individual governmental authority? Here this investor has the question of the amount of his revenues controlled so that he can not say what they shall be, and no enterprise of his can control them, but they are controlled by a governmental authority, and added to that are the differing policies of 49 authorities, all of which have the power of affecting his revenues. And when he comes to the expense account he finds that that is not in the hands of a single responsible authority—responsible to the whole people—and to a comprehensive and complete view of the needs of commerce and of the instrumentalities of commerce, but that that, too, is subject to the uncoordinated, diversified, and unrestricted—except as constitutional limitations restrict it—exercise of the power of 49 different agencies.

Now, Mr. Investor, how do you like that situation? Is there anything in that to make you particularly keen to part with your hard-earned money and put it into that enterprise? Is there or is there not something there for the Government to consider and for the Government to correct, if you are going to continue to rely upon the voluntary action of investors free to come in or free to go out?

What else does this investor see when he comes to consider now whether it is to his interest to put his money into this enterprise? He sees a system of regulation born of the passionate resentment in the public mind against abuses and continuing only the principles of correction and punishment under the principle of repression—no principle of lifting up and building. He finds, therefore, that not only is he invited to come into an enterprise where he can control neither his revenues nor his expenses, but he comes to make his investment subject to a system which contains only the principles of repression and correction, and which has in it no recognition of the necessity for him to be encouraged and protected.

Is there anything in that that you, as representing the public, can rely upon to secure from private individuals the new money that is needed to build up and to make stable these great fundamental instrumentalities of the public welfare? Suppose he looks a little further, this investor, examining into the merits of the thing in which he is asked to make an investment, and finds that there has been a gross advance in 16 years of 16 per cent in the proportion of fixed charges put upon that property to which he must come in subject, and where the margin for his security, be it lien or be it stock—the margin on which he must rely for his reimbursement and for the safety of his investment—has been reduced from over 50 per cent in 1900 to now about 35 per cent; do you think that that constitutes an element of real attraction to an investor? This man that you must attract, his man that you can not coerce, you are inviting into a banquet room where the fare will be in his mind, only the fare of starvation instead of the fare of plenty, and you are asking him to permanently identify himself with an enterprise that is made subject to these conditions in respect to the exhaustion of equities and to the gradual progress toward the entire exhaustion of asset value. Such a man—this investor—will not be contented to look only in the direction to which you invite his attention. He is not going to see only your railroad

investment. He is at liberty to look at other classes of investment. He is at liberty to measure their attractions, and he is at liberty to choose between them. How will he choose between the investment which is subject to severe and restrictive governmental regulation on the one hand, and which he is free to enjoy, and the operation of the forces of economic development on the other? How will he select your railroad investment when he sees the standard of your earnings vastly inferior to the standard of the earnings in other industrial pursuits from agriculture, or from agriculture down?

I say that in deference to my friend from Georgia.

Mr. ADAMSON. That is correct.

Mr. THOM. How will he select, when he has the whole field of clear and unencumbered assets on the one hand as a security, and he sees the margin of equity in the railroad world reduced to 35 per cent against over 50 per cent 16 years ago? And when you invite this gentleman, with his money to invest, to consider a railroad investment, what will be the impression on him when he is free on the one hand to invest in a line of business which is governed only by business considerations, which is subject only to the limitations of honesty, which puts no restriction upon genius or enterprise? That, on the one hand, and a system of transportation which is not controlled by simple business considerations, but is subject to the fluctuating views of political parties. How will he select?

Some of these things that I have alluded to are inseparable from the railroad industry. The principle of governmental regulation is inseparable from it. We must reckon with that. We must take that as our starting point, but after we have taken it that does not end the question. It comes back, then, to the system and permanency and provisions of regulation, that they may be as wise as they can be made, in order to safeguard the public against abuse and at the same time offer adequate attractions to the investor to continue the supply of facilities.

We are not here to discuss the freedom of this industry from regulation. That is universally accepted as a permanent and enduring part of American policy, and I, for one, concur in it, not only as a fixed policy, but I am a disciple of its wisdom. I believe it ought to be, so that when I raise my voice here it is not for the purpose of attacking the principle or the policy of regulation, but it is for the purpose of trying, as far as my efforts can contribute to it, to see that the system of regulation is made as wise and as helpful as it can be made for the preservation of this great and essential industry. I do believe that a means must be found of creating an authority of regulation that shall be as free as possible from political consideration. I realize that it is, perhaps, a Utopian dream to think that that can be done entirely, but I do think that that is the point to which the efforts of statesmanship should be directed, to find a method of applying governmental regulation to an industry which shall be safeguarded as far as possible from political consideration and political influence. We know that at the present time—I say this in passing merely as an illustration of what I am meaning in this part of my remarks—we know that a railroad to-day may refuse to pay, under the instructions of the Interstate Commerce Commission, a claim to some important man at some crossroads, that it may

make by that obedience to the instructions of the Interstate Commerce Commission a political enemy of a man to whom we do not pay the claim, and that he may have strength enough to influence the election of some man that will feature his political life by an attack upon the railroad interests. We can not survive that any more than any other business can survive. The decree of the American people has gone forth that railroads shall stay out of politics, and the railroads with which I am acquainted do stay out of politics. That same policy which issues that righteous decree to the railroads should see to it that the other side, that side that wants to attack the railroads, stays out of politics, too.

We plead before you gentlemen for a nonpolitical body—business system of regulation—which shall give every guaranty that it is possible for your wisdom to invent, that the business questions on which your welfare hinges—and by your I mean the public welfare—are dependent, shall be decided on principles of business righteousness and not of political expediency. Your railroad business can not long survive if it is made a football of politics, and the more it is made so the more dangerous it is; the less it is made so the more you attract the man that expects business conditions to surround his investment.

I have tried, with such suggestiveness and force as I could command, to bring to your minds an appreciation of the fact that there is a condition of serious depreciation in railroad credits. I have tried to show to you that that is a matter that does not primarily concern the railroad owners to the extent it concerns the general public. I think we should now go further and inquire into the causes of this decline in railroad credits. I have hinted at that in the course of what I have said, but perhaps it will be useful to catalogue them again, in order that we may see whether there is anything in them that is impossible for national policies to remedy.

Mr. Chairman, I have spoken two hours and a half now. It is a considerable effort to speak three hours and a half. I will not be able to finish to-day. I would like very much, if I could, before going into this subject, which is a very large one, if I can come to-morrow morning and continue.

Mr. ADAMSON. Mr. Chairman, I would suggest that we utilize the time to go into executive session for a few minutes.

The motion was agreed to.

The committee thereupon proceeded to the consideration of executive business, after which the doors were reopened and the committee adjourned until to-morrow, Friday, November 24, 1916, at 10 o'clock a. m.)

## INTERSTATE AND FOREIGN TRANSPORTATION.

FRIDAY, NOVEMBER 24, 1916.

CONGRESS OF THE UNITED STATES,  
JOINT COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*Washington, D. C.*

The committee met, pursuant to adjournment, in room 326, Senate Office Building, at 10.30 o'clock a. m., Senator Francis G. Newlands (chairman) presiding; Hon. William C. Adamson, vice chairman.

The committee resumed its session pursuant to Public Resolution 25, joint resolution creating a joint subcommittee from the membership of the Senate Committee on Interstate Commerce and the House Committee on Interstate and Foreign Commerce to investigate the conditions relating to interstate and foreign commerce, and the necessity for further legislation relating thereto, and defining the powers and duties of such subcommittee.

The CHAIRMAN. The committee will come to order. Mr. Thom, you may proceed.

### STATEMENT OF MR. ALFRED P. THOM, COUNSEL RAILROAD EXECUTIVES' COMMITTEE, WASHINGTON, D. C.—Resumed.

MR. THOM. Mr. Chairman and gentlemen of the committee, in speaking yesterday of the disappearing sources for the supply of needed funds for railroad improvement I omitted one of the sources which seems to me to be of great significance and consequence to the public.

The railroads of this country have been created by the spirit of adventure of the American people. They have been willing to go into enterprises involving an unknown future and great risk in the hope of large returns. There is no man acquainted with public affairs or with the history of the creation of the transportation facilities of this country that does not appreciate that without the spirit to which I have alluded there would have been no such transportation system as exists in America to-day. The spirit of the man who was willing to adventure his means in the hope of great financial return is what has accomplished the creation of the American system of railroads.

Now, that source has, of course, been eliminated. There can be no system of strict governmental regulation which would leave any room for the man who is the adventurer or speculator, if you please, in the subject matter that is thus recognized. While we all recognize that that situation is one that has necessarily come, in dealing with the future and in laying our plans for the preservation and the growth of this system, we must not shut our eyes to the fact that that great

body of adventurers, or capitalists, which was controlled by the spirit of adventure, has disappeared as a source of supply to the increase of railroad facilities. So that we are reduced now to the conservative investor when we want to get money. In order to attract him there must be offered to him, in the place of risk and large returns, stability and certainty for his investment. Therefore, in your outlook, in your constructive scheme for the future, in your purpose to preserve an adequacy of railroad facilities for the growing commerce of this country, you can not shut your eyes to the fact of the disappearing and exhausted sources of supply of this capital, but you must address yourselves as practical men to the accommodation of what you do to the actual possibilities of the situation with which you are dealing.

Gentlemen, may I for a moment try to interest you in the question of what the financial needs of the railroads are likely to be during the next 10 or 12 years? Of course, we have no lamp to light our feet as we tread along this pathway, except the lamp of experience. We can only study what has been done, what the tendencies are, what the growth of commerce is expected to be, and from that attempt to adduce what will be necessary in the way of transportation facilities to accommodate the commerce which may reasonably be expected.

We have had that subject studied, and in due time the exact methods of that study, the way it was carried on, the figures which have been deduced from it, will be presented for your consideration. I will now simply give you the method and state conclusions.

In our effort to ascertain what are the reasonable needs of the future we have studied the growth of population, industries, and commerce during the past 20 or more years, and the growth and development of railway traffic and of facilities and equipment during the same period. We have tried to show what the percentage of increase year by year has been during that period; how the property has grown; how the traffic has grown, and how the railroad facilities have grown to take care of it. The result is this, from the growth of population, industries, and commerce during this period, this has been found:

First. That the wealth of this country has increased at the rate of 8 to 9 per cent per year, and that the same ratio of increase has held good in the demand for transportation.

Second. That the forces that have operated in this growth and development in the past apparently continue still in full operation and may reasonably be expected to so continue for the next 10 or 15 years.

Third. The investment in railway facilities in order to meet the enlarged requirements of the future because of this continued growth and in order to fulfill the duties and obligations imposed upon the railways by the public must therefore also proceed at a corresponding annual rate of increase.

We take, then, 8 per cent as the result of these figures, to indicate the annual growth that must be provided for in railroad facilities of all sorts in order to keep up with the 8 per cent of increase in the business of the country, and the result of that is that during the next 10 years there will be needed approximately twelve hundred and fifty

millions of dollars a year, in order not to constrict the business and productive energies of the country and in order to supply them reasonably with the facilities which this growing business will require. Now, those figures, of course, are not accurate; those figures indicate a mere attempt to forecast within some sort of reasonable limit the needs of the railroads and the public interest annually during the next 10 years. Those figures apply only to the amount that will be required to increase your facilities; they do not contemplate the amount that will be required to refund your maturing debt. From the best information that we can obtain, there will be required to refund maturing debts during that time a sum approximating two hundred and fifty millions of dollars a year; so that the requirements of the railroads for new money during the period to which I allude are estimated by us to be fifteen hundred millions of dollars a year.

Now, as I say, those figures are an attempt at approximation; it is the best estimate that we have been able to give. They are larger than the amounts which have been expended during the last few years, which have amounted to six or seven hundred millions of dollars a year, but they are based upon the creation of facilities such as will accommodate commerce and not on the policy of skimping and restraining commerce and not having facilities adequate to its accommodation. These figures therefore will illustrate to you the problem with which you will be confronted in creating a constructive system of railroad regulation in providing for the future needs of the public which you represent. Whether somewhat greater or somewhat less, they are figures of a magnitude sufficiently great to arrest the attention of men charged with your responsibility.

Is it not fair to ask of a system which limits revenue but does not limit expenses, where this money is to come from? Is it not fair to ask that in any constructive measure which is favored by the Congress of the United States this essential need of the people shall not be overlooked, and that some method shall be provided which will reasonably assure the necessary input of capital to bring these and to keep these instrumentalities of commerce up to the requirements of the public needs? Can it for a moment be contended that existing systems have that effect?

I have but to ask you to recall the situation that confronts the American investor, as I attempted to describe it to you yesterday, to see that there are no such inducements of safety and certainty and of a friendly attitude of government toward this great essential of public welfare as to make it certain that that investor will put his means in this restricted field of financial return. In view of that, has not the time come, in the language of the President, to take a new appraisalment of the conditions that surround these properties in order to see whether or not your present system of regulation contains those principles of encouragement and helpfulness and assurance which will be their support in the minds that must at last determine the question that is in the minds of the great investing public? Of course we all must recognize that there is an inherent difficulty in the way—a difficulty which we must all reckon with—and that is the difficulty that the revenues of the carriers must be regulated by some governmental authority; that there must be some limit put by governmental authority upon them. That, in itself, is a limitation of a serious character, and to be considered

from an economic standpoint when we come to deal with this subject. That, however, is a difficulty which can not be removed. We must deal with that as a fact. It is the outcome of the important relationship which these carriers bear to the public welfare; it is the outcome of the consequent system of regulation, which must now be regarded as a permanent part of American governmental policy. But we are entitled to examine the question—whether or not the system of regulation which has the effect of limiting these revenues is of a character that presents as few difficulties as possible? We have a right to consider, in examining this accepted system of regulation, whether there is anything in it which unnecessarily deters public confidence from this investment, which unnecessarily complicates the situation, and which unnecessarily builds up difficulties in its way?

If you gentlemen can for one moment put yourselves in the position of the man who wants to choose his investment, and who is willing to accept a simple and an orderly but at the same time an efficient system of regulation, I think you will appreciate that the thing that you will demand is that the system of regulation shall be as comprehensive and as wise and as little subject to local and fluctuation influences as it is possible to make it. I do not think that you would go about seeking an investment which may be limited not only by one authority, but by many authorities. You would want a system of regulation as little influenced by politics as you could get it; you would want a system of regulation as little controlled by selfish and narrow interests as you could get it; you would want a system of regulation which could take a large and comprehensive view of national needs, and take the broad outlook of American commerce, which appreciates that it is continent-wide, within its own limits, and that means must be created to allow it to reach the farthest markets of the earth. If you accepted, as you must do, that there must be regulation, you would demand that that should be as simple and as wise and as broad and as farseeing as it could be made. Would you consider it as bearable to have so many different governmental agencies, with varying policies, with varying conceptions of the needs of commerce, all able to put their own special limitation upon what your investment might be allowed to earn; all able to create special conditions of expense, to which your investment must be made subject?

Now, gentlemen, I hold in my hand a letter which was not written to me, but was written by an important business man, whose consent to read it I have not got and therefore I shall not mention his name, but which I have been permitted to see, and the important part of this letter I shall ask your indulgence while I read it to you, because it expresses the standpoint of the disinterested business man as he looks upon this transportation problem. It was written during the current month. It was written in connection with a convention of business men held in the last week or two in the city of Baltimore. It was written to express his view of what that business association should do in regard to this matter of transportation.

I wish to thank you for this invitation—

He refers to the invitation to attend the meeting—

and to express my regret at not being able to attend the conference, as I have no doubt a discussion will prove of interest, as the matters to be considered are very important.

While I recognize that there are still many evils to be corrected, I am beginning to wonder whether we are not approaching the time when we are in danger of going too far in our endeavor to exercise control over our railroads.

Is it not time to take cognizance of the fact that the Interstate Commerce Commission is not the only power exercising control? Most of the gentlemen gathering at Baltimore will be business men. How many of them would want to start in business if the rates of wages and the conditions of employment were so controlled that the cost of their output was largely a matter outside of their control and if at the same time the prices at which they could sell their commodities was a matter in which they had little or no voice? How many of them do you think would care to remain in business, and in case they could not get out, how many of them do you think would feel very much interested in improving or extending its facilities? Certainly, under such conditions, no one not already in business would care to start any new enterprise.

To what extent is the present lamentable breakdown in our transportation facilities due to the underlying causes above referred to? I don't suppose anybody knows very definitely to what extent that may be the case, but isn't there probability enough of there being an intimate relation between the present inadequate condition of the equipment of our railroads and the fact that the officers of our railroads are no longer in control of our transportation facilities, to any very marked extent, to give us pause and perhaps look at this problem from a somewhat different standpoint. That the railroads themselves are largely to blame for the necessity of exercising some means of control can not be denied, but as all movements in public sentiment and in reform swing too far and have to recede, are we not rapidly approaching the time when the swing of the pendulum in this movement should be checked?

It may throw some light on the present status of these problems if we very briefly review the early history of our railroad building. Very few of our railroads were profitable investments when they were first constructed. The resources of the country through which they passed were undeveloped, the revenues in most cases were insufficient to pay for the upkeep of the roads and equipment and provide interest for the bonds, and most of them went through bankruptcy and had long periods of lean years before they ultimately reached the point where they could pay even 5 per cent or 6 per cent on what would have been a fair valuation of their assets. Of course, the investors had hopes of very handsome returns or they never would have built the roads. To be sure, the public had just grounds for grievance against some of them because of the stock-jobbing schemes that were employed and because of the many of the methods of discrimination that were followed, but just the same had it been known in advance that no larger returns would ever be made and that ultimately, even if they could be made, would not be permitted because of Government regulation, most of our railroads would never have been built by private enterprise. Could any group of men to-day be induced to build a trunk-line railroad for the purpose of competing with those already in existence, with all the risks of losing their money, knowing that from the beginning at best they would have a long period of unprofitable operation until the natural resources along their line should be developed and knowing from the beginning that in no event would they be permitted to earn more than a mere 5 or 6 per cent on their investment?

With a knowledge of these facts before us, does anyone suppose that if the conditions now imposed had already existed our railroads would ever have been built by private enterprise? Is it not therefore a matter of great good fortune to the country that our railroads were built before these restrictive conditions were imposed?

If the conclusions above reached are measurably correct do they not also apply, although somewhat in a lesser degree, to the problems involved in increasing the facilities and equipment to meet the ever-increasing necessities of the public? How far is the present shortage of cars and equipment due to this condition? If our railroads are deprived of the opportunities to make money enough to enable them to provide additional trackage and equipment sufficient to meet the growing demands of our country, how are these necessities to be provided for and how is our country to continue its development? We all decry Government ownership, but are we not in danger of creating conditions that will force it upon ourselves? We know something of how the red tape, politics, inefficiency, and increased cost of operation resulting from Government ownership would ultimately affect rates and the service rendered, but even more serious would be the fact that Government-owned railroads would always lag behind necessity. Needs for additional trackage, terminals,

and equipment would never be anticipated. We all know that it is hard enough, and many times impossible, to get Congress to do a thing even after the necessity for it had long been apparent, hence our railroads would never be ready for a great business movement when it came. The ills we now have are as nothing compared with those we would have under Government ownership. It is time to be careful.

Mr. THOM. Now, gentlemen, this brings me to consider, in the effort which I am advocating before you, the simplification of the system of regulation—this brings me to consider on its merits the dual system of regulation both by the State and by the National Governments. This question should be considered from two standpoints, one from the standpoint of the discouragement to the investor which this dual system of regulation creates, and the other from the standpoint of the effect of this dual system of regulation by one State upon the interests of another State, and upon interstate commerce.

I have spoken to you at length in regard to the effect upon the credit of the carriers. I have called your attention to the fact that the investor himself is repelled when he comes to consider that his investment is made subject not only to one regulating authority, but to many regulating authorities. I have called your attention to the fact that one State may have a narrow policy, that it may consider that its system of rates should just escape the line of confiscation, and that it should make no contribution whatever to a high efficiency standard of transportation facilities. We all know that there are such States; we all know that the courts have been full of cases where State-made systems of rates have been attacked because the railroads regarded that they did not escape the line of confiscation, but that they were actually confiscatory in their character, and whether those cases have succeeded or not it is only necessary in order that the State might win them that the line of confiscation was escaped, or that there was no available proof that the line of confiscation had been kept below. We all recognize the fact that the cases which have charged confiscation in this country have been almost entirely cases in regard to State-made systems of rates and seldom in regard to Nation-made systems of rates. We all know, therefore, that it is within the power of the States, unrestricted by any constitutional limitation, to cut the level of its rates down just so that it will escape the condemnation of the fourteenth amendment.

Suppose there are States that do that? Suppose that those States can control an average of 15 per cent of the traffic of the railroads, for interstate traffic, generally speaking, in this country, is about 85 per cent of the whole and State traffic is about 15 per cent of the whole. Now, suppose it is within the power of a State simply to cut down the earnings of the railroads, that 15 per cent, to the line of confiscation, and just to escape it? What view will the investor in these railroads take of the existence and sometimes of the exercise of such a power as that? Is that power an inducement to the input of this new capital which I have attempted to show you is essential in the interest of American commerce? Suppose a State might go further and adopt a policy, as some States have adopted it, that States' markets are for State people, and the theory of interstate commerce across the border is impeded and sometimes prevented by a scale of rates which makes dealings across the border impossible?

Would that impediment to the free flow of commerce, created by the local views and the local conditions of men who can control measurably those questions, be an inducement to the investor to put his money in a business subject to such conditions? But I have discussed that feature of the situation sufficiently. I beg you to let your minds revert back to what I had the honor of saying to you on yesterday in regard to the attitude of the investor and let me come at once to the consideration of how the policy of one State can adversely affect the policy of another State; of how inherently there is in this situation a power inconsistent with any comprehensive and sound view of what commerce is. Commerce has ceased to be a neighborhood affair. Men no longer deal simply with their neighbors, but steam and electricity have done their work, and the markets of the world have been brought to the doors of the business men of the country. Their field of enterprise is no longer a restricted and neighborhood field, but the productive and commercial energies of the people know no limits, except the limits of the civilized globe. In order to deal with that question, therefore, we have got to get a national view of what commerce is and what commerce demands. We have got to get away from any narrow conception of it, but appreciate in a comprehensive way all its needs and all its interests. The man who deals now simply with his neighbor has fettered himself with a condition of slavery—of commercial slavery—which is out of keeping with the spirit of freedom which pervades the earth in regard to what commerce is. In our little communities we see our neighbors producing the foodstuffs which are to feed the armies of Europe. In our little communities we see our neighbors producing the foodstuffs which are to supply the great markets of America.

Men will not be content with their own market towns as a limitation upon their commercial possibilities. In obedience to that tendency, great lines of railroads have come into existence, not as a matter of financial scheming but in obedience to the operation of a commercial law which is all controlling; and that is that the instrumentality of commerce must accommodate itself to the needs of commerce. And so we see the great lines of railroads in this country which are serving the people, and are serving them according to their needs—take no note of States lines, but they pass on from the vast fields of production to the great markets of America and to the great ports of America. They are carrying commerce where commerce wants to go. They are not hauling within the confines of States where commerce does not want to go. They are responding to an economic condition which they could not create, and to whose behests they must yield an unquestioning obedience. Should our system of regulation recognize that fact or refuse to recognize it? Any system of regulation of an economic question which throws itself athwart the path of economic progress is destined ultimately to failure. There may be checks, there may be obstacles, there may be artificial and unnatural conditions sought to be imposed, but at last, gentlemen, the logical operation of economic laws will prevail over human-made laws and human intelligence sooner or later will begin to recognize it; and when it is recognized the adjustment that is made will be by the laws to the economic conditions, for it is impossible to adjust economic conditions to the laws.

Now, these economic conditions in which your constituents want to deal with all the people of the earth are in operation. That economic need may be checked but it can not be destroyed. The thing for statesmanship to inquire of is whether the time has come for a better adjustment of statutory laws to recognize economic conditions. What value have the lines of the States from the standpoint of interstate and foreign commerce? They may be adhered to from political preference. There may be an indisposition to disregard them from inherited or political consideration but there is no justification for that from a commercial standpoint; and the question before you is whether you will bind the commerce of America by political considerations or whether you will study it in its commercial needs and in its economic aspects, and will adjust your laws to the actual conditions which do apply to and control it.

I ask your attention to the effect of State regulation upon other States. We shall attempt to develop that in the evidence which shall be adduced before you; but I will take the liberty of referring to a few conditions in respect to it which are known of all men and which may well illustrate the purpose I have in mind. In the first place, I call your attention to the fact that between the Potomac and the Mississippi Rivers there is not a State that does not make the State rates, and the State commerce in no two of the States moves on the same terms, although the Government makes them all. Now, is not that a startling proposition? Is not that an illustration of the inconsistent and uncoördinate views of State management of commerce, that when each State is exercising its power to determine the terms on which its commerce can move within its own borders there is such a difference of conception of the problem that the commerce of none of those States moves on the same terms? As indicating the diversity of State policy in respect to these matters, and of the effect that one State law may have upon the commerce of another, I bring to your attention the different laws of the States in respect to the fine that may be imposed for failure to furnish cars. One State I have in mind imposes a fine of \$5 a day for not furnishing a car on demand. Another State imposes a fine of \$1 a day for not furnishing a car on demand. The interstate-commerce act imposes no fine.

Now, take the present condition of car shortage, in which, in obedience to the great currents of commerce, the available equipment of the railroads has passed on to some other section of the country, and imagine the case where there is only one car to supply these three demands—the demand of the State which imposes a fine of \$5, the demand of the State which imposes a fine of \$1, and the demand of the Interstate Commerce Commission, which has no fine in regard to the failure to furnish a car—one car to be selected for the three, two to “go without,” one “to have.” Which is going to get it? And when the State with the severest penalty gets a car, it has taken it away from its sister State, it has taken it away from interstate commerce. Is that a proper balance of power in respect to the matter in which all the States and all the people are interested? Ought the question of a fair and equitable distribution of car supply to be in the hands of the selfish interests of one of the States or ought it to be in the hands of the Government of all the States, which can act impartially between them?

I will illustrate another situation. I attempted to show you yesterday the great interest which the whole public has in a proper supply of new capital. There are 19 States in this Union now asserting the power to regulate the issue of new securities, each demanding the power to approve or disapprove. Now, what is the subject matter in respect to which they are exercising that power?

The mortgages or the stock issues of these continuous lines of railroad relate to the whole line, not to the part within a single State, unless under most unusual conditions. The general situation is of a mortgage which covers the property from end to end and through many States, or the stock which is based upon an ownership in the whole line through many States. Now, 19 States say that such a railroad as that, in which 10 or a dozen States are interested, can not raise any new money, can not provide any new facilities without the consent of that one State. What is to become of interstate commerce under such a restriction as that? Here are facilities needed, vast quantities of new equipment to go from one end to the other of this continent, and yet 19 States say you can not issue any securities to buy that equipment without the consent of each one of us.

Let us see how it has operated in practice. Let us see some of the instances in which the power has been exerted, and inquire what has been the effect upon other States of the exercise of that power.

There was the great New York Central system, running from the City of New York through the whole extent of that State, across the State of Ohio, across the State of Indiana, and, for a few miles, into the State of Illinois—less than 20 miles, I am told, in the State of Illinois. Recently they desired to issue a large amount of securities for the purpose of reorganizing and coordinating that whole system. The State of Illinois was called upon to give its consent to that issue. They gave it, but they said the laws of the State of Illinois imposed as a condition of our consent a tax of \$1 per \$1,000 on this issue, and thereupon they insisted on a payment of \$600,000 by the New York Central as a condition of the issue of those securities. Less than 20 miles of the railroad in the State of Illinois. That railroad, running entirely across the State of Indiana, entirely across the State of Ohio, entirely across the State of New York. What greater right had the State of Illinois to exact that \$600,000 than the State of Indiana had or the State of Ohio had or the State of New York had? And if all had done it, if all had exercised that power, what would become of the possibility of making that financial transaction, which was approved by the commission of the State of Illinois?

Are the people of the different States of this country going to remain long in silence and accept this power of exaction which one of the States may make, the effect of which is to place a burden upon their commerce and a limitation upon the facilities upon which their people are dependent? Somebody must pay that \$600,000. It must have some effect upon the public, either in the payments they must make to sustain it or in the withdrawal of that amount from the facilities which the public ought to have to carry on its business. Somebody must pay it; some public interest must be burdened; and can you for a moment tolerate the conception that an instrumentality on which the State of New York, of Ohio, of Indiana, and of Illinois are dependent, shall be burdened, shall be crippled by the imposition

of a tax which is approved by the policies of the State of Illinois, but which is rejected by Indiana, by Ohio, and by New York?

Are you familiar with the recent instance of what has happened in the New England States in regard to the New York, New Haven & Hartford road? Recently that road was confronted with the early maturity of a number of short-term notes. It wished to provide the means to take up those notes and, in addition, a fund of \$25,000,000 to give enlarged terminals, more equipment, and better facilities to the commerce served by that property. It was necessary to go to Rhode Island, to Connecticut, and to Massachusetts in order to obtain the approval of those States to the issue of that \$67,000,000. The State of Rhode Island gave its approval, the State of Connecticut gave its approval, but when Massachusetts was reached, although its commission approved of what ought to be done, it was found that the laws of Massachusetts forbade, as construed by the highest court of that State—the laws of Massachusetts forbade that issue. So that the \$67,000,000 of securities could not be issued, although approved by the commissions of all three States—although necessary in the public interest, according to their conclusion—because in the laws of one of the States an impediment existed which prevented the policy of the other two States from being carried out.

And we see now in the embargoes which have been put upon the New England roads, in their congested condition, in their incapacity to serve the public, the loss of this \$25,000,000, part of the \$67,000,000 which was intended to supply the very facilities which is making the commerce of New England break down.

What right—what governmental right—have the laws of the State of Massachusetts to stand in the way of the commercial facilities of Connecticut and Rhode Island? What are the inherent difficulties and troubles in this system which permit the policies of one of the States to stand across the path marked out by the others and to prevent any expansion of the commercial facilities upon which all are equally dependent?

I will give you another striking instance of the burden placed by some of the States upon other States. I shall not attempt to discuss the wisdom or the unwisdom of any State. I am attempting to discuss merely the conflicts between the States.

Here are the States of New Jersey and of Pennsylvania that have believed it right to pass a law called by some people the "full-crew law" and by other people the "extra-crew law," which means that the laws of those States require that the complement of the train crew shall be increased up to the standard fixed by the acts of those States. Now, those laws operate on railroads which are not confined to those two States. They operate on railroads which go through New Jersey and Pennsylvania, but also through Ohio, Indiana, and Illinois, through Delaware, Maryland, and West Virginia, and beyond.

Not one of the other States which I have mentioned has given its approval to those laws. Right or wrong there is a conflict in view between the States of New Jersey and of Pennsylvania who make this requirement, and the States of Ohio, Indiana, Illinois, Delaware, Maryland, and West Virginia, which do not make it.

The result of the action of New Jersey and Pennsylvania is to impose an annual charge upon those railroads, amounting to \$1,700,000 a year, which is interest at 5 per cent on \$34,000,000. The

commerce of those States does not pay that charge. It pays only their proportion of that charge. The commerce of Ohio, Indiana, and Illinois, and of Delaware, Maryland, and West Virginia is called upon to contribute.

What justice is there in the commissions of these other States being burdened with that charge which they do not approve, to carry out a policy which they have not adopted, simply because some other State has adopted it? What soundness is there in the view that one State should thus possess the power of encumbering with charge the business of other States in order to carry out a policy in which those other States do not participate?

But that means that the action of the States of New Jersey and of Pennsylvania—right or wrong, I shall not discuss—but it means that the actions of those States have laid their hands upon the capital fund of \$34,000,000, 5 per cent of which is the \$1,700,000 annual charge to which I have alluded, and have produced that much incapacity on the part of those carriers to apply that capital fund to increased transportation facilities in these other States as well as in those States. The policies of those States have required that an interest which would support a capital investment of these \$34,000,000 should be withdrawn from the establishment of facilities which these other States might have preferred, in order to carry out the State policy in respect to this full or extra crew provision.

This provision may be right or it may be wrong. That is not the question. The question is which authority—what governmental authority—ought to be able to say whether or not the charge shall be imposed upon the commerce of America. Is it right that one of the States should be able to say it, or ought that question to be passed upon by the authority which represents all of the States which can look into the comparative needs of all American commerce and shall parcel out the burdens with an equal hand, applicable everywhere alike?

I find that I have omitted to mention one of the features of the operation of this law where a State is exercising the power of approval or disapproval of the securities, which ought not to be forgotten, and I will revert to that part of my argument for the purpose of mentioning that now. I refer to the issue by the Southern Pacific of a large amount of capital shares, which was approved by the State of California, but where application had also to be made to the State of Arizona. When application was made to the State of Arizona the approval was given, but a condition was attached that a part of the proceeds of those securities must be expended in the State of Arizona. No impartial authority established to determine where that amount of money could best be expended in the interest of the commerce of the whole people, but each State able to affix its own selfish conditions and say, "I will give my approval, but some of it must be spent right here," and designating the amount.

Now, let us suppose a case where the whole of that capital fund coming from that issue of securities was needed in some other State or was needed in facilities for interstate commerce. Suppose, to make the supposition simple, that the whole of that fund was in reality needed to buy equipment which would go everywhere, and the State of Arizona affixed a condition that it should not be all spent in equip-

ment, but some of it must be spent right there in the State of Arizona in some subject of investment not needed in the opinion of the railroad and not needed in the opinion of the great commercial public, but required merely as the exercise of a power, and that power exercised, perhaps, in obedience to some considerations of political expediency. Now, ought these business enterprises be subjected to that? If they ought, the conclusion that they ought must be based upon the idea that they have an inexhaustible treasury, which may be controlled without regard to the ultimate needs of commerce, but from considerations of merely local and political expediency. All of us know that the capital fund of these railroads is limited; all of us know there must be as much wisdom in the expenditure of those capital funds as there should be in the expenditure of the capital funds of the Nation or of a city, and we all know that they can not long survive a system which empties their treasury not out of regard to the interests of commerce, but out of some local or neighborhood conception of what is politically expedient.

This matter that I am now alluding to was considered so important that it was made a matter of debate in the Congress of Railroad Commissioners held in this city last week, the minutes of which I hold in my hand, where that matter that I have just alluded to is condemned. The conception of what is fair and just in this matter has had a stormy history in the consideration of these State commissioners themselves. There has been a struggle on the part of some of them to recognize the national aspects of this problem of the approval of capital issues of these railroads, and the pendulum has swung back and forth from different meetings of these commissioners, they having adopted in 1913 a resolution which is here, saying that the matter of controlling the issue of these interstate carriers should be in the hands of the National Government, whereas, when 1914 came, they met in convention and took the opposite view, that it should not be only in the hands of the National Government, but should also be in the hands of the States, and now, in 1916, they come together again.

In a deliberate report of this committee they report favorably certain conclusions, the first of which is this, that the Interstate Commerce Commission be given power to regulate the stocks and bonds of interstate carriers. That is one of the issues that you gentlemen will have to determine. You will not have to determine it only by the considerations which I have mentioned, but by the consideration of creating a workable system, because no railroad can be financed unless the men charged with the responsibility are in a position to act promptly and to take advantage of favorable market conditions. Promptness is an essential element in any system of finances, and if a proposition to make a capital issue and to obtain money for the needs of the commerce of the country must go not only to the National Government, but to the authorities of many States, time will be consumed, which may defeat the whole purpose.

The usual method of doing these things is to find out from some group of bankers or from some banking institution whether or not they will take an issue of securities and agree upon the price. They will make their acceptance or refusal of that offer of those securities on existing market conditions. They will not consent to leave an open offer to be availed of at any indefinite time, but a time

limit and a short time limit, is necessary in order to insure their cooperation.

To create a system of approval of these securities, which means that not only the National Government but that each of the forty-nine States, or each of the nineteen States, or each of several States must all be appealed to to give their securities, disappoints the very opportunity in many cases that would otherwise be able to handle the transaction.

I am acquainted with a situation which well illustrates the point to which I have alluded, which I have stated under a supposition in the following language [reading]:

Conceive the not impossible case suggested by a recent dramatic event in the history of the world.

A railroad company has been maturing for some time past a large financial plan with the purpose of taking advantage of a general market such as we all know recurs at periods sometimes widely separated. A great steamer, say the *Lusitania*, sails at a moment of international tension. Those in charge of the financial policy of the railroad are justified in believing that something may happen to that steamer which will affect international relations and destroy for many months, and perhaps for years, a market for securities. So far as their own business preparation is concerned, they are ready to bring out the carefully matured plan and place their securities. It becomes, then, a question of days before the possibility of disaster to that steamer may be realized. Meanwhile some State commission, for some such reason as has been suggested, is delaying the approval of the issue. It does delay until the disaster happens, and so defeats the financial plan, with the result that there is at least an indefinite postponement of additional railroad facilities essential to the best interest of the commerce of the country.

MR. THOM. It seems to me it requires no longer consideration on the part of men of affairs charged with large and far-reaching responsibilities in respect to this matter to show that the system of controlling issues of interstate carriers must be in the hands of the National Government, and in the hands of that Government alone. Why should it not be? Is the Nation a foreign power? Is the Congress of the United States inimical to the States? Is it not a part of the American system of government? Are you not placed in national control because there are certain national affairs in which all States are interested, and there must be, in the nature of the case, an impartial tribunal between them which shall decide the cases with which this universal interest is affected? Are you not a part of the system of constitutional government, and are you not required, out of the necessity of the case, to act in these matters where an impartial authority between the various States is needed in order that justice may be equal and in order that there may be no race of greed and no narrow policy on the part of this union that will oppress the people of the other States?

There is another feature of State regulation to which I would like to invite your attention. It is already so completely in the public eye that a reference to it is hardly necessary, and that is the question of the power of a State to discriminate against the commerce of other States. I allude to the Shreveport case, where Texas declared a policy of controlling a foreign market in favor of its own traffic and sought to exclude the trade of Louisiana from Texas markets by reducing the level of rates within the State below the level of interstate rates.

That was the assertion of a power to create at State lines a barrier against interstate commerce. After that case was fought out and it

was determined that even under existing laws there was a power in the Interstate Commerce Commission to prevent such discrimination, a bill was introduced in the Senate of the United States by a distinguished Senator to abolish that doctrine, and a hearing was had before the Interstate Commerce Committee of the Senate on that bill. On the one side were the authorities of the State of Texas, supplemented by the active support and encouragement of a committee from the National Association of Railway Commissioners; on the other side was the assistant attorney general of the State of Louisiana, a representative of the railroad commission of Louisiana, and a representative of the trades bodies of the city of Shreveport, and there a debate was had before that committee. It transpired in the course of that debate that while Louisiana was attempting to get into the markets of the State of Texas and was being hampered and impeded by the policies of that State that the city of Natchez, Miss., was trying to get into Louisiana and was impeded by the policies of that State, and at a lull in the proceedings a gentleman came into this room whom I had never seen before, but, of course, well known to me by reputation, and at a convenient time he arose and said that he wished to introduce into that record some telegrams that he had received from his State, and that gentleman was the distinguished Senator from the State of Missouri, Mr. Reed, and these are the telegrams he read [reading]:

ST. LOUIS, MO., June 29, 1916.

Senator JAMES A. REED,  
Washington, D. C.:

We understand there is a hearing before the Senate committee in Washington to-morrow on bill 5242, introduced by Senator Sheppard, of Texas, seeking to nullify Supreme Court Shreveport decision. St. Louis as a city on the borders of the State suffers extremely from the very condition which that bill seeks to perpetrate. We already have pending before the Interstate Commerce Commission a proceeding seeking to prevent discrimination against this city, arising out of the action of the Illinois Legislature and public utilities commission, as illustrating how we are affected. While it only costs 25 cents to come across the bridge from East St. Louis the fare from Chicago to East St. Louis is \$1.88 less than it is to St. Louis. This, of course, is merely a sample of what happens with respect to passenger traffic. A similar situation exists with respect to freight traffic. We most earnestly protest and ask your aid in preventing the passage of the bill.

THE BUSINESS MEN'S LEAGUE OF ST. LOUIS,  
CLARENCE H. HOWARD, *President*.  
GEO. W. SIMMONS, *Chairman Traffic Bureau*.  
GEO. J. TANSEY,  
*Chairman Committee National Legislation*.

And then when that was read he asked that another telegram should be read, and said [reading]:

I have a similar telegram which reads as follows:

ST. JOSEPH, MO., June 29, 1916.

HON. JAS. A. REED,  
United States Senate, Washington, D. C.:

We understand that there is a hearing before the Senate committee to-morrow on bill 5242, introduced by Senator Sheppard, of Texas, and respectively urge upon your consideration that our people are very much opposed to limiting the powers of the Interstate Commerce Commission and broadening the scope of State regulating bodies in matters of railroad regulation. It is unnecessary for me to call to your attention that if this amendment is adopted it will enable State regulating bodies to reduce freight rates on shipments moving entirely within the State regardless of interstate rates and will very seriously injure the

jobbing interests of Missouri, which perhaps has more jobbers in proportion to her population than any State in the Union. You are no doubt aware that we now have before the Interstate Commerce Commission for decision rates promulgated by the Nebraska State Railway Commission, decision in which case was expected last January, but owing to the gravity thereof the commission apparently has been weighing the situation.

W. J. C. KENYON,

*Manager Traffic Bureau Commerce Club.*

Mr. THOM. The echoes of that had hardly died away when the new Senator from the State of Tennessee appeared, Senator McKellar, and said that he appeared in behalf of commercial bodies of the city of Memphis to complain that the State of Arkansas would not permit Memphis to get into its market, but was excluded.

I desire to narrate an incident that I will have to give you from memory, as I do not seem to have the paper which I thought was among the papers before me.

Some years ago an application was made to the Railroad Commission of Georgia to establish a station at the State line of Tennessee, where there was a station just across the line in Tennessee, and the Georgia commission heard that application, and declared that, upon looking into the situation, they found that the Georgia rates were lower than the interstate rates, and that the influence behind that application was to have a station established just inside of the Georgia line so that the interstate commerce intended to be carried across the line should go on the Georgia rate; and they declined it because they said that was the situation, and they illustrated by saying that the interstate commerce from a Georgia point to Tennessee, that could be accommodated from this proposed station, would go at State rates, or at interstate rates if consigned across the border a few hundred yards farther, in accordance with the desire of the shipper. The Tennessee business could come into Georgia either at Tennessee rates or at interstate rates, in accordance with the determination of the shipper in Tennessee and the consignment that he made of his business, and that was a mere device for the purpose of destroying the effect and the authority of interstate regulation, and that they would not be a party to any such exercise of power.

Now, you say to me: But in this matter of discrimination against interstate commerce there is now ample power in the interstate-commerce law. Let us look at recent events and find whether that is so.

Within the last few months the Interstate Commerce Commission has found that the passenger fares in Kansas discriminate against interstate-commerce passenger fares, being 2 cents for one and 2½ cents for another, and they have undertaken to fix, under this authority, the State rates in Kansas. They say that 2½ cents is as little as the public interest will permit in respect to passenger fares, and therefore they have undertaken to fix these passenger fares so that the State rate shall be brought up to what they have determined is a reasonable limit. Did the matter end there? At once, when an attempt was made to obey this order of the Interstate Commerce Commission, the authorities of the State arrayed themselves against it, and the railroads that were subject to this order went into a court in the State of Kansas and secured an injunction against interference by public authorities with them. Thereupon the public authorities in that State went into another court and got an injunction

against the railroads, forbidding them to obey the order of the Interstate Commerce Commission; and those two cases are pending there now.

So that, although the power was sought, possibly, to be included already in the Interstate Commerce Commission of preventing that discrimination, we find that, practically, it is not there, because it is not accepted as a construction of the law under which all people will live, and obedience to it is obstructed by every legal process that can be devised, and meanwhile commerce—interstate commerce, commerce of all the people—is not moving on terms which the Supreme Court of the United States and the Interstate Commerce Commission say are the lawful terms on which it should move. Now, we say that matter ought to be made clear in the law.

There is another striking illustration which is attracting public attention at this very moment. Some time ago the Congress amended the fourth section of the act to regulate interstate commerce, known as the long-and-short-haul clause, and under its provisions has required the southern carriers to readjust their whole systems of rates in the South, which has been done after two years of most extensive and arduous work, and with the result that it is approved by the Interstate Commerce Commission and ordered to be put into effect.

Now, when we come to the State limits of the State of Georgia we find that it is necessary to obtain the consent of the commission of that State to any readjustment of the rates there in order to make this adjustment ordered by the Interstate Commerce Commission effective, and we have been obliged to prop up in every conceivable and in every temporary way possible the system of long-and-short-haul rates that await the decision of the State of Georgia. Now, fortunately, in the State of Georgia we have men of great capacity and great fairness on that commission. We are anticipating that ultimately we will get that consent; but the power to give the consent involves the power to refuse the consent, and in measuring and estimating systems of public law we must not be controlled simply by whether or not a law is wisely and fairly administered but by the possibilities of unfair and improper administration of it.

We are here studying systems; we are here seeking for the philosophical principle of law; we are attempting to devise a well-balanced system of regulation, in which the people shall not be dependent merely upon the wise and the fair, or the unwise and the unfair exercise of some given power. We are trying to show that there must be no interposition of any power which, if improperly administered, may be destructive of the public welfare, and we are confronted, in that view of the case, with a situation which I have described, existing in the State of Georgia, where we have had our men before that commission for the last four or five months, attempting to demonstrate to the commission the propriety of their application, and with concession always, by the very fact of our appearance, that it is dependent upon their judgment, and not upon the operation of the interstate commerce laws, as to whether or not it is possible to put the interstate commerce laws into effect.

Is that a secure basis of law? Is that a condition which can be tolerated by the statesmanship of America? Is that a fair balance of the powers between these two sovereignties? Or must we seek for a remedy which will recognize what commerce is; that it is one

inseparable, indivisible entity, which must be consistently regulated through all its parts; or somewhere an unhealthful strain will be put, or somewhere an unjust burden will be imposed.

Turning for a moment to another aspect of this case, let us conceive of a railroad running through 11 States; 85 per cent of its business is interstate commerce; 15 per cent of its business is State commerce. Let us conceive of a case where the interstate policies of the National Government, and where the views of 10 of the States concur in the wisdom of maintaining that instrumentality of interstate commerce at a high and efficient standard; suppose that one of those States refuses any substantial contribution on the part of its commerce to the maintenance of that standard deemed essential in the public interest by the interstate commerce authorities and by the 10 other States; what is to be done? Are the interstate commerce authorities and the 10 States to surrender to the one, and to accept its standard? If so, that one State regulates interstate commerce, and regulates the commerce of the 10 other States; it imposes upon them all inadequate transportation facilities. Or shall the other 10 States and the interstate commerce say "We will not accept the views of that one State; we will insist on this instrumentality, upon which we are all dependent, being maintained at this high standard of efficiency." How is that to be done? It is to be done by taking the burden which the one State refuses to bear and placing it on interstate commerce and on the commerce of the other 10 States.

There is a shift of burden, unjust and inequitable in its character, from the State that declines its contribution, that refuses to recognize the accepted standard of efficiency of the carrier, upon which all are dependent, and a shifting of its burden upon the commerce of the 10 other States and upon interstate commerce.

Now is any system of jurisprudence sound which permits that result? Is there any system of governmental regulation sound which puts at the mercy of one of the States the commercial policies and interests of every one of the other States, dependent upon the same carrier for facilities?

We must recognize, gentlemen, that the progress of invention, that the application of new forces, that the triumphs of human genius have confronted this country with a new conception of what commerce is and what the needs of the people are in respect to it. We must recognize that these instrumentalities of commerce have in effect become and are to be considered as great national movements and that systems of jurisprudence must be adjusted so as to take adequate note of this great transformation, which lies so near to the essential welfare of the American people.

This leads me to ask your attention to something of a fundamental study of the constitutional conception of commerce; of the reasons which have brought our constitutional system into effect, and to try to deduce from that something of what the governmental duty of this country is in dealing with this important subject.

When the time came, after the successful termination of the War of Independence, for us to begin to try to form a permanent system of government, which should be adequate to the requirements of our people, we found a situation to exist in which each State possessed the power of imposing export taxes on traffic going to its sister States, and thus enabling it to keep its products at home, excluding

them from the use and enjoyment of the people of the other States; that each State possessed the power of imposing import duties as against the other States, and thus could exclude people of the other States from its markets, and that each State retained complete control over its own ports, and thus, by its commercial policy, could, through the competition of ports, regulate or break down the commercial policy of another State in regard to its own ports and in regard to its own commerce. We find, too, that those were not merely theoretical powers, but that they were exercised by the various States. For example, we find that Virginia, by her export duties and inspection laws, with the incidental tax, sought to keep her tobacco at home; that Maryland, by her inspection laws and taxes, sought to do the same with regard to certain of her products; that Massachusetts prohibited the exportation of grain or manufactured calfskins and imposed and required an inspection tax on exports of other States on tobacco, butter, and other products, while North Carolina, for a limited time, placed an embargo on the exportation to other States of corn, wheat, flour, beef, bacon, and other necessities of life. Turning to imports again, we find that New York, by imposing an import duty, sought to exclude from its markets the butter, milk, and other dairy products of New Jersey, and the firewood of Connecticut. That Rhode Island imposed an ad valorem tax of 5 per cent on all articles imported into that State from the other States, as well as from foreign countries, with a proviso for reciprocal relief; and so with the other States.

We find that the ports of Boston and New York were, at one time, far behind Newport in the value of their imports, and that Rhode Island, according to the Supreme Court of the United States, paid all the expenses of her government by duties on goods landed in her principal ports and furnished to the people of the other States.

The condition at that time of commercial selfishness and greed between the States is thus described by Fiske, in his work on the critical period in American history, 1773 to 1789, and I quote from Fiske as follows [reading]:

Meanwhile the different States, with their different tariff and tonnage acts, began to make commercial war upon one another. No sooner had the other three New England States virtually closed their ports to British shipping than Connecticut threw hers wide open, an act which she followed by laying duties upon imports from Massachusetts.

Pennsylvania discriminated against Delaware; and New Jersey, pillaged at once by both her greater neighbors, was compared to a cask tapped at both ends. The conduct of New York became especially selfish and blameworthy. That rapid growth which was soon to carry the city and State to a position of primacy in the Union had already begun. After the departure of the British the revival of business went on with leaps and bounds. The feeling of local patriotism waxed strong, and in no one was it more completely manifested than in George Clinton, the Revolutionary general, whom the people elected governor for nine successive terms. \* \* \* It was his first article of faith that New York must be the greatest State in the Union. But his conceptions of statesmanship were exceedingly narrow. In his mind the welfare of New York meant the pulling down and thrusting aside of all her neighbors and rivals. \* \* \* Under his guidance the history of New York, during the five years following the peace of 1783, was a shameful story of greedy monopoly and sectional hate. Of all the 13 States none behaved worse except Rhode Island.

A single instance, which occurred early in 1787, may serve as an illustration. The city of New York, with its population of 30,000 souls, had long been supplied with firewood from Connecticut and with butter and cheese, chickens and garden vegetables from the thrifty farms of New Jersey. This trade, it was observed,

carried thousands of dollars out of the city and into the pockets of detested Yankees and despised Jerseymen. It was ruinous to domestic industry, said the men of New York. It must be stopped by those effective remedies of the Sangrado school of economic doctors, a navigation act, and a protective tariff.

Acts were accordingly passed obliging every Yankee sloop which came down through Hell Gate, and every Jersey market boat which was rowed across from Paulus Hook to Cortlandt Street, to pay entrance fees and obtain clearances at the customhouse, just as was done by ships from London or Hamburg, and not a carload of Connecticut firewood could be delivered at the back door of a country house in Beekman Street until it should have paid a heavy duty. Great and just was the wrath of the farmers and lumbermen. The New Jersey Legislature made up its mind to retaliate. \* \* \* Connecticut was equally prompt. At a great meeting of business men held at New London it was unanimously agreed to suspend all commercial intercourse with New York. Every merchant signed an agreement, under penalty of \$250 for the first offense, not to send any goods whatever into the hated State for a period of 12 months. By such retaliatory measures it was hoped that New York might be compelled to rescind her ill-considered enactment. But such meetings and such resolves bore an ominous likeness to the meetings and resolves which in the years before 1775 had heralded a state of war, and but for the good work done by the Federal convention another five years would scarcely have elapsed before shots would have been fired and seeds of perennial hatred sown on the shores that looked toward Manhattan Island.

That is the condition which confronted this country at the time that the question of adopting a commercial policy was under consideration. Not only that, but the question of the relation of the 13 colonies to the great undeveloped section of the West was involved. There was Great Britain on the northern boundary; there was Spain on the southern boundary attempting by conciliatory commercial and political policies to secure the political allegiance of the people of that great developing country, and it was perceived by George Washington and by the others who had control of the policies of that day that if, superadded to those advantages and those proximities of neighborhood there should an ideal grow up, that each of these commercial States—I mean the States along the American coast line—could shut their ports so that the people of the West would be obliged to pay tribute to the people of the East; so that the supplies which were brought in here for consumption in the great northwestern territory would have to pay tribute to the eastern ports before they could go to supply the needs of those pioneer communities, that then a condition of alienation so tremendous would grow up as that the great West would throw its political fortunes some with Spain on the south and the others with Great Britain on the north.

And in order to prevent that, the statesmen of that day, led by Alexander Hamilton, James Madison, and James Monroe, and a great number of public assemblages in all parts of the country, determined that there should be established for the American people the doctrine of free trade among the States. It was to meet the selfish policy of some of the States, as illustrated against Connecticut by the State of New York, and against New Jersey by the same State; as illustrated by Rhode Island against all her sister States; as illustrated by Virginia and Maryland and North Carolina in the restrictive legislation in regard to their own products. It was to stimulate the necessity of building the great developing northwestern territory into the Union, by showing its people that the things they had to consume and which must be imported would not be subject to a levy in favor of the other States, but should go unburdened to them, that the commercial policy of this country was conceived and was adopted. So that the very thing I ask you to remember, the very thing that created the constitutional system of free trade among the States, was the historic fact that some of the States were selfish, that some of the States attempted to live off sister States, and that there was an effort made to embarrass commercial intercourse in favor of the selfish and narrow interests of some of these State bodies. To meet that the Constitution of the United States was adopted, and to

express it the power of regulating interstate and foreign commerce was surrendered by the States into the impartial hands of a national body, which should represent and act for all the States. That was the genesis of your system. That was the cause of its adoption. That was the reason for its existence. It purposed to prevent the oppression of one State by the differing and narrow policies of another State.

Now, what then do we see happened? We see that these States meet in convention; they determined to divide their rights into two sets, one the governmental powers, which they reserved; the other, governmental powers and protection and rights, which they acquired by going into the Union. There became State rights which were reserved, there became State rights which were acquired, and it must be noted that each one of those States prizes higher the rights which they acquired than the rights which they surrendered. The rights which they acquired were no less State rights than the rights which they reserved. It was just as much a State right of Virginia to have the United States Government do for it the thing which it promised to do when it entered the Union, as it is to exercise its own police power within its borders. What are those rights which were acquired? One of them is the right of national defense. It is a right of Alabama and Iowa and Georgia, if any of them are attacked, to have the Nation come to their defense. That right would not have existed, except for the compact of the Constitution. That right was a right acquired by entering the Union. That right is an acquired right of the States and is as substantial as any right which was reserved. They acquired a right to a national system of post offices and post roads. That right would not have existed, except for their going into the Union, but it is a State's right now, none the less sacred and none the less important because acquired instead of reserved—that the Nation should furnish the States with their post-office facilities. The States acquired the right by entering the Union to a uniform system of tariff and of port policies. Unless the Union had been entered, the people of Wisconsin would have had no right to the equal entry with the other States in the port of New York. They would have no right, except that they entered the Union, to a uniform tariff policy throughout the Union. They acquired the right to uniform tariff policies and to uniform port duties and laws by entering the Union.

We find no dissent and no jealousies in respect to any of those matters. We find no hankering anywhere for a State to assume the right to defend itself against attack. We find no demand anywhere for a State system of post offices. We find no demand anywhere for a separate tariff or port policies. No State right is considered as infringed by the enjoyment of those fruits of national helpfulness which they acquired a right to by entering the Union, but none the less, gentlemen, no less sacred, no less complete, no less important, is the right which each State acquired when it entered the Union to a uniform commercial policy and to free trade among States. There the power was given as an acquired right of each State that its commercial policy shall not be made by its neighbor, but should be controlled by the national authority, which should act impartially between the States, and which alone could speak for all. So when

I come to hear a question of State's rights involved in this matter, I hasten to accept the comforting realization that the right which each State acquired by entering the Union, as high, as complete, and as important as any other, is that the commerce of my State shall not be controlled by the different policy of a State across the border, but that I can come here where I am, in my father's house, and where each one of you represent me as much as you represent any other section of the Union, and can plead for an impartial, a fair, a helpful, and a comprehensive regulation of my commerce, and expect to be answered with some just and equitable and comprehensive and equal system of regulation throughout the Union; where I am not dependent on what the people across the border may do in throwing burdens upon me, but where the burdens that come shall come from the representatives of us all, and be distributed with an equal hand among all the people of this continent.

Am I intruding upon any sacred rights of anybody by asking that? Am I disregarding any just power of anybody else when I ask for that? Am I violating any constitutional right of anybody else when I ask for that? I feel that I am merely coming to the constitutional fountain of all our rights, and asking that a policy shall apply to all, that shall affect all, that shall protect all, shall be the outcome of the universal judgment, and not of the judgment of a small fractional part. And when I make that request, I am not asking the disregard of a State's right; I am asking for the enforcement of a State right; and it seems to me that that issue should be decided, not by a jealousy of the distribution of governmental power, but by the determination of the issue whether, in the interest of all the people and all commerce, there should be a regulation by one central and all-comprehending and all-comprehensive authority. It is manifest that the only way to exercise a complete and a protecting and helpful regulation is to take hold of the instrument of interstate commerce. You can not divide its business; you can not leave one part of its business to somebody's else regulation and you regulate the other, because the influence of a regulation of any part may have such destructive consequences upon the instrument of interstate commerce that the different States dependent upon the same interest may be most unfortunately and most hurtfully affected.

The only method of dealing with that question is—and I repeat it—for you to regard commerce from the standpoint of its instrumentality, to take possession of that instrumentality, to determine the standard of usefulness, and to determine the standard of its correction, and to determine the standard of the constructive principles of government which should be made to apply to it.

Mr. Chairman, do I understand that 1 o'clock is the hour for adjournment?

Mr. ADAMSON. If you are tired, Mr. Thom, I will make a motion to that effect.

Mr. THOM. I have spoken to-day as long as I think I can comfortably do so.

The CHAIRMAN. Mr. Thom, Mr. Thelen, of the California commission, desires to return to California as soon as possible and would like to be heard next Tuesday. How would that suit your engagements?

Mr. THOM. I do not desire to stand in the way of anybody, Mr. Chairman.

The CHAIRMAN. How much longer will your presentation take?

Mr. THOM. I will probably finish my presentation in chief to-morrow. I am told, in a very suggestive way, that I may be subjected to cross-examination for about a week. [Laughter.]

Mr. BRISTOW. Mr. Chairman, speaking for Mr. Thelen, I desire to say that he does not wish at all to appear before Mr. Thom has completed his entire statement and has had ample time to do so. Of course, he would like to go home, but we are here and we do not want to return until there is a full presentation of the case which the carriers desire to present. If that can be done by Tuesday, all right; if not, we will delay our appearance.

Mr. ADAMSON. I move that we go into executive session.

Senator CUMMINS. I want to ask a question of Mr. Thom. Mr. Thom, you intend to discuss the legal aspects of this matter before you finish your argument, do you not?

Mr. THOM. I did expect to discuss that, probably at a later date. I will state my conclusion as to the legal matters, but as to the legal argument I supposed that would be desired at a later period. I had not intended to enter into anything but the fundamentals of the legal argument here.

Mr. ADAMSON. It is your purpose, however, is it not, Mr. Thom, that before you close your opening remarks you will lay before us your suggestion of a plan for remedy?

Mr. THOM. Oh, yes, sir; completely.

Now, Mr. Chairman, one minute, if you please. Judge Knowlton, of Massachusetts, is also to make a statement and has arranged, I believe, to be here on Tuesday, has he not, Mr. Rich?

Mr. RICH. He will be here Monday.

Mr. THOM. Will you interrupt my statement for him, or anyone?

Mr. ADAMSON. I think, Mr. Thom, that witnesses can rely on notice from you, Mr. Chairman, a day or two always in advance of their appearance?

The CHAIRMAN. Yes. An arrangement will be made regarding that within the next day or so. I simply wanted to understand the situation.

Mr. ADAMSON. I move that the committee go into executive session.

(The motion was agreed to, and at 1 o'clock and 2 minutes p. m. the committee proceeded to the consideration of executive business, after which the doors were reopened and the committee adjourned until to-morrow, Saturday, November 25, 1916, at 10.30 o'clock a. m.)

## INTERSTATE AND FOREIGN TRANSPORTATION.

**SATURDAY, NOVEMBER 25, 1916.**

CONGRESS OF THE UNITED STATES,  
JOINT COMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The joint committee met in Room 326, Senate Office Building, at 10.30 o'clock a. m., pursuant to adjournment, Senator Francis G. Newlands presiding; William C. Adamson, vice chairman.

The CHAIRMAN. Mr. Thom, you may resume your statement.

### **STATEMENT OF MR. ALFRED P. THOM, COUNSEL RAILROAD EXECUTIVES COMMITTEE, WASHINGTON, D. C.—Resumed.**

MR. THOM. Mr. Chairman and gentlemen, Mr. Cullop was kind enough yesterday to call my attention to an error in a statement that I made to the committee as to the mileage of the New York Central in the State of Illinois. The information on which I was acting evidently had relation to the mileage of the New York Central main line, the one which begins at New York and ends at Chicago. I have undertaken, in consequence of having the suggestion made that the mileage was in error, to find out the exact figures, and I have this information which I would like to have put into the record:

The New York Central has 6,034 miles of first track, owned, leased, or otherwise operated. Of this, 149.8 miles are in Illinois. Of all tracks, 14,942 miles, 329.4 miles are in Illinois.

That is supplemented by this letter, the letter from which I take this information:

The distance from the Indiana-Illinois State line to Chicago is 23.8 miles, and the length of the right of way of the former Chicago, Indiana & Southern (now New York Central) within the State of Illinois is 118.53 miles, so that the total length of right of way of the New York Central in that State is 142.33 miles.

Of course, the principle which I was seeking to emphasize is not affected by these figures. It is a mere question of the accuracy of the figures. The point that I was making was that one State has no right to encumber the commerce of a number of other States by exacting for itself a large tax as a condition of its approval of the issue of securities which is imposed on the commerce of all the other States, and to which it has no greater right than any of the other States. I emphasized that by showing the very small mileage in Illinois as compared with other mileage elsewhere, but that was a mere matter of emphasis. It was not a matter of principle. It turns out that there is a somewhat larger mileage in the State of Illinois than I supposed.

But to visualize what the proportions are, here is a map of the system and here are the lines of the system before you get to Illinois [illustrating]. Then you run up into Chicago a short distance, and there are two or three lines there in the State of Illinois, but nothing like an equal proportion to those in the States of Indiana, Ohio, or New York.

The committee will recall that I have been attempting to develop the view that the credit of the railroads, which must be kept adequate to the public needs, and which is substantially affected by having both revenues and expenses of carriers, is controlled by so many different governmental agencies, and that there is a consequent necessity of simplifying the existing system so that investors will be subject to only one comprehensive governmental authority, and I further attempted to develop the view that each State by entering the Union has acquired a right to be protected by one impartial regulating power, namely, that of the National Government, against the different views and policies of other States.

I wish to follow that contention by asking you for a moment to consider the relation of transportation to national defense. We shall, in the course of this hearing, attempt to develop that matter intelligently and comprehensively. The American thought at the moment is concerned with the question of preparedness. Congress, in response to a great sentiment, has voted millions of the public revenues for the purpose of putting this country in a condition of national defense. The mind of the people has been attracted to the great struggle now in progress on the Continent of Europe. We have seen small States overrun and destroyed. We have seen large portions of the conquered people deported to alien territory. We have seen one great Nation, supplemented, it is true, by the cooperation of one or two others—but one great Nation standing out above all its allies, standing out against all its opponents, and sustaining a struggle for more than two years now which has amazed the whole civilized world, and it has been done because that Nation was prepared; because that Nation was efficient; because that Nation was organized in all its parts to throw its whole force into any effort it might make. Its history, the result of this titanic struggle, whichever way it may go, has taught its lesson to the world. It has made men see that the day of the small and defenseless state has passed and that the day of the great nation, with all its resources available and organized, with all its forces capable of being thrown into active operation, is a necessity of modern development, so much so that here in this Capital note has been taken of that condition and larger navies are ordered, and a greater Army is provided for, and the policy is not only advocated by the President but is accepted by both parties in this country, that this Government and its people must be organized and efficient in order to meet any possibilities of the future.

What is the fundamental condition of that organization? Can you organize the American Nation, except on the basis of efficient transportation? What would your scattered resources amount to unless there is some way of concentrating them at the point where they may be needed? So that it must be admitted that the fundamental thing to do in connection with national preparedness, in connection with national organization, in connection with national efficiency, is to make certain that the fundamental of them all is pro-

vided, and that is adequate transportation. If that be true, and it needs no argument of mine to enforce it—if that be true, what government must, in the nature of affairs, fix the standard of transportation efficiency in this country? The National Government is charged with the duty of national defense. Transportation is at the very basis of its capacity to perform that duty. There must be a standard in time of peace of transportation facilities which would bear a proper proportion as to the needs in time of war. There must be a quick opportunity to change peace conditions into war conditions, as respects that transportation; and yet, the creation of a system of national railroad transportation is not the work of a day. It is a matter of slow growth. It is a matter to be dealt with by forward looking men, trying to comprehend the needs of the future and trying gradually to provide for what the interests of the people will demand, and that standard can not, with any philosophic soundness, be committed to a governmental authority which is not charged with the duty of national preparation and national defense.

This is but another angle from which to view this question. The interest of the public, as absolute and demonstrable as it is in respect to this matter of defense, in having a national standard of efficiency in the railroads, is no greater than the interest of the public from a commercial standpoint. The facts of the railroads to-day, the requirements of trade, the way the distance and time have been annihilated by the agencies of steam and electricity, the combination of the whole human family into commercial relationship with one another, the fact that transportation lines are the basis of national efficiency and national defense, in times of war as well as in times of peace, all go to define what the subject matter is with which you are called upon to deal. It all goes to show that your system of regulation, the attitude of our Government toward this question of transportation must, if it is to be successful, recognize the facts. It is impossible any longer to confine commerce within State lines. It is impossible to hold your commerce at the boundaries of States. It is a matter in which, as States, there is no public interest. We are one great commercial family. My interest as a Virginian and your interests in your various States, do not differ in respect to this matter. We have been, up to this time, closing our eyes to the facts of commerce. We have been closing our eyes to the conditions which control intercourse between the various communities of this country and of this world. We have been adhering to the archaic view that State lines and transportation have some reference to one another. Now, can you get a sensible, can you get a sound, can you get an enduring system of regulation which shuts its eyes to the facts of the case? We must first know the facts. We must first appreciate the facts, or we can never adjust Government regulation to this subject matter in a way that will permit it to be enjoyed. The statesmanship of this land must be able to see the commerce of a world. It must appreciate all of its needs. It must understand that it is accommodated in the largest proportion by these railroads, and it must adjust the railroads to the commerce of the world.

There is no contention here that State commissions ought to be abrogated. There is no contention here that the powers of the States,

where they properly apply to the subject, ought to be invaded or weakened. A vast field of usefulness on any method of dealing with this subject would be left to the States and the State authorities. The questions of taxation, the questions of the exercise of police powers in respect to matters not vital and which do not affect the other States, the control of public utilities that are local, all of those matters enter into any suggestion which will be made and would be still exercised by the States, but where a matter comes of such a character, which, if viewed in one way by one State will affect the destinies and the interests of another State, the influence of which will not be confined to its own borders, but all parts beyond, and affect other people, which, of necessity, will have an influence of a substantial character upon interstate and foreign commerce, and which will affect and perhaps control the standard of efficiency of American transportation, ought to be taken over by the one authority which can speak for all of the States.

Heretofore our system of regulation has dealt with the method of conducting commerce. Now, it is essential that we should provide a means of conducting commerce. Without surrendering any of your corrective power, holding that in full force so as to deal with any abuse that may hereafter occur, the time has come for the regulating power of government to take hold of the instrument of commerce and regulate that. No longer content with touching this subject at its circumference, we must rise to the realization of the fact that the time has come now, if regulation is to be regulation, to take hold of the instrument of commerce and regulate that. That must be regulated, not only by corrective processes, but it must be regulated by protective processes. Something must be introduced into our system of regulation that will guard the great public requirements. These instrumentalities of interstate commerce and of foreign commerce, and of all commerce—because you can not divide their functions—must be put and must be kept in a condition of adequate efficiency, measured by the public requirements.

Now, when you come to study this question, after these 29 years, when you take up the commission given you by Congress, and recommend to Congress by the President, that you shall make a new assessment of the conditions that surround this question of transportation, can you make that new assessment with intelligence or thoroughness unless you come to see that the problem now is for the Nation to guarantee to the public an instrument of commerce?

You see where we are going to. I have tried to point out the tendencies of the times. I have not spoken of it as a matter of immediate disaster, but I have shown you the menace involved in the present condition. And it seems to me that you can not disregard what these conditions meant and refuse to see that there has arisen a problem which must now be dealt with, and that is the problem of the Nation guaranteeing that there shall be commerce by guaranteeing in its method of regulation that there shall be adequate instrumentalities of commerce.

My legal proposition is that the Constitution, as now framed, with the powers which it now has, is full of authority to Congress to regulate the instruments of interstate and foreign commerce in all its parts. At a later day in this hearing I shall ask the privilege of

making the legal argument to support that view. I state it merely now.

If your power of regulation is to meet the public requirements, your power of regulation must be coextensive with the instrument of interstate commerce. You must have the right to fix the standards of efficiency; you must have the right to protect it against destruction; you must have the right to follow it with your correcting and with your protecting care, conduct, and policies throughout its whole extent.

With that view of the Constitution, with that view of the needs of commerce, I come to make to you these suggestions as to what should be done in this matter of regulation, and in which suggestions, with the light now before us, the railroads of this country are practically agreed.

You can understand from what I have said that the first suggestion we shall make is that the entire power and duty of regulation should be in the hands of the National Government, except as to matters so essentially local and incidental that they can not be used to interfere with the efficiency of the service or the just rights of the carrier.

Now, mainly, that means that the National Government should take over the regulation of all the rates of the interstate carriers. Of course, the exact line of demarcation is a matter of consideration and debate. The exact line of demarcation, I mean, between what powers should be exercised by the State and what should be assumed by the National Government. We contend that it is impossible for you to regulate this instrument of interstate commerce unless you regulate its rates within the States as well as the interstate and foreign commerce rates.

I have attempted to demonstrate as I have proceeded that the power to fix State rates by the State is a power to fix them in such a way as to throw the burden of maintaining the instrumentalities of commerce on the commerce of other States and on interstate commerce. Can such a power as that be tolerated by the governmental authority which represents all the States? Can Congress permit Massachusetts to fix its rates so low on State business that the burden of sustaining the instrument of interstate commerce on which both Massachusetts and Connecticut are dependent shall fall upon the business of Connecticut, or on the interstate business of the two? Is it a sound division of power that attempts the impossible task of dividing up the one single instrumentality of Congress which does both interstate and intrastate business and let a substantial part of the sustaining revenues of that instrumentality be fixed without reference to the whole; be fixed in such a way that at the instance and under the power of one of the States an unfair burden will be thrown upon the other States?

Can you philosophically divide this instrumentality which does all the commerce of all the people over the same tracks and in the same cars and by the same men and say it is necessary to have men of a certain type, it is necessary to have tracks of a certain standard, it is necessary to have equipment of a certain quantity, and then to let some other governmental power come in and withhold its contribution from a part of the business of that same instrumentality, so that the burden will be thrown on some other State or on some other class of commerce?

This is no new view. The underlying principle of it was expressed very many years ago by one of the wisest of American justices, Mr. Chief Justice Marshall. He says:

The National Government is a Government of all; its powers are delegated by all; it represents all and acts for all. Though any one State may be willing to control its operations, no State is willing to allow others to control them.

What a splendid and accurate application that has to this matter of commerce. Here is an instrumentality in which all the States in a given group are equally dependent for their means of commercial prosperity. Any one State may be very willing to control its operations, but is any one of those States willing for some other State to control them? If not, then those instrumentalities must be controlled by the Government which is the Government of all, the powers of which were delegated by all, which represent all and acts for all.

The next proposition which we will ask this committee to consider favorably is this:

As one of the means of accomplishing this system of national regulation a system of Federal incorporation should be adopted, into which should be brought all railroad corporations engaged in interstate or foreign commerce. Such a system of Federal incorporation should be compulsory and not elective. It should also preserve to corporations reincorporating under it not only all their contract rights and other assets of all sorts but also their existing charter powers, except as to any feature contrary to an act of Congress, and should also confer upon them the general powers conferred upon all corporations by the Federal act. The system of incorporation should provide a means for the consolidation or merging of existing corporations engaged in interstate or foreign commerce with the necessary power of condemnation as to assets which can not be otherwise acquired, such as unassignable leases, etc.

Of course, it will be appreciated that this is a proposition of far-reaching consequence. We have been led to it after long debate among ourselves. We found certain of the strong railroad corporations of the country wedded to the conditions under which they grew, possessing favorable charters, sustaining happy relations with their States—we found at first considerable divergence of opinion as to whether they would be willing to give up that enviable position. But as the matter was debated from all its sides, as the reasons were given for it and a more comprehensive view was presented, the opposition which at first appeared has in almost every case entirely disappeared, and we are able to present this view as practically—not altogether, but practically—the unanimous view of those charged with the responsibility of these railroads.

Now, what are the arguments that have brought them to this conclusion? The first of these arguments is this: We are all convinced that in order to satisfy the public view and in order to provide against any possible abuse in financing in the future there must be a system of governmental regulation of the issue of securities. We are further convinced that the only practicable and working method of securing that governmental supervision and regulation of securities is to have it through the one body appointed and empowered by the National Congress. We know that no system will continue to

work where we have so many masters and so many divergent views as to the financial needs and regulations of these carriers.

Now, how is that national regulation to be secured, in such a way as it will be universally accepted as legally and constitutionally sound? We are confronted with a number of State charters which contain limitations upon what the railroads may do in financing. Those limitations are, in many cases, narrow limitations. The financial needs of the public for new facilities have outgrown them, but they are there, as charter limitations upon the State entity.

Now, the question arises, Can Congress remove that charter limitation of the State corporation, thereby in effect amending the State charter so as to authorize a system of financing approved by the national standard?

Now, I have no difficulty in my own mind upon that question, as I have said everywhere where the question has arisen. I believe that the constitutional power does exist in Congress to do that very thing. I believe that it is an essential part of the regulation of commerce, and comes within the commerce power as contained within the Constitution, but I do not find any unanimous concurrence in my view of the Constitution in respect to that. Other lawyers of greater eminence, and greater authority than myself believe to the contrary, or at least they say, "Whether we believe to the contrary or not, we contend that there is such a question of doubt in respect to that matter, that it will be impossible to determine which way the truth lies until it is decided by the Supreme Court of the United States." They point to the fact that when an issue of securities is offered, the question of the legal validity of that issue is referred by the investors to their counsel for opinion as to the validity of those securities, and those counsel do not give their opinion of probabilities; they do not base their advice to their client on what they think ought to be; they are cautious, gentlemen, and they simply try to find out and say what they know will be. And these lawyers who take a slightly different view from my own as to the constitutional power, ask me, "Suppose a question of that sort, of the right of the National Government to authorize a charter power, granted by a State, to be exceeded, was referred by some banking concern, which proposes to take the securities, to their lawyers. Do you not admit (they say) that that banking concern will be advised that there is sufficient question about this matter to have it first carried through the Supreme Court of the United States?" And they have asked further, "Can the railroads—can the public—have the whole system of financing halted with no opportunity to raise the funds needed to supply cars and tracks and terminals and yards during the time that it will be necessary to carry that question to the Supreme Court of the United States?"

Well, that raises the practical question, which I think must arrest the attention of every man. I am obliged to say that I think a question will be raised about that; I am obliged to admit that I think, if referred to counsel, counsel will take the opposite side, and will advise that the matter be tested in the courts; and I am obliged to say that that will introduce a period of uncertainty, during which the financing of these railroads will be arrested.

Therefore I have come to the conclusion that some other method of dealing with the question must be adopted, which will obviate

these unfortunate practical results to which I have alluded—unfortunate not so much from the standpoint of the carriers as from the standpoint of the public service.

None of us can doubt the power of Congress to regulate its own creature, and if these roads are made to incorporate under a national charter, then there can be no doubt that Congress can regulate the amount and character of their financial dealings, and when Congress does regulate them, there will be no necessity for carrying the questions to the Supreme Court of the United States, and there will be no period during which the financial operations of these carriers will be arrested. So that practical argument has had perhaps more weight with these gentlemen who have come to recommend this thing to you than any other single argument.

Then, there is another reason which addresses itself to us in respect to this matter. Here is a plea made for complete national regulation of the instrumentality of commerce, the regulation of the instrumentality in all its parts, to a point of protection, to such standard of protection, as the public interest shall demand. The hands of the National Government will be strengthened to make that regulation complete and efficient if the whole instrumentality is a creature of its own laws. The harmony essential to the equality of commercial opportunity among all the States and all the people will be insured if all of these properties in respect to all their finances are matters of national authority.

Then we ask that this system shall be made compulsory and not be allowed to be elective; that every railroad company engaged in interstate and foreign commerce shall be required, after a certain date, to take out a national charter, just as they might be required, after a certain date, to take out a national license. There are several reasons which induce us to make that proposal; one is that if you adopt a system of Federal incorporation you must seek to rest your constitutional authority on one of or all of several powers, the power to establish post offices and post roads, the power to provide for the national defense, and on the commerce power.

We know that wherever the question has been presented to the United States Supreme Court of a national incorporation an effort has been made to rest it on all three of those powers, but the court has always singled out the commerce power to sustain the incorporation. Where it would go under these other powers is as yet an unknown problem. We do know that the Supreme Court recognizes the commerce power as a sufficient basis for a national incorporation.

Now, let us take that power: That power is to regulate interstate and foreign commerce. There must be a fundamental idea underlying the term "regulate." There can be no regulation which may or may not be accepted by the person regulated or the interest regulated. It is fundamental to the idea of regulation that it shall be binding. No man can regulate me if he leaves me free to accept or reject the regulation. I am still unregulated, whatever he may call it, and, therefore, for a system of incorporation to be a regulation it must be compulsory. It can not be left to election of the railroads to be regulated, whether or not they will accept that rule of regulation.

We think that is a most important conception of this matter, not only important because of its constitutional relation—its relation to the Constitution—but important from a practical standpoint.

Let us suppose a case of an elective system of incorporation and of some railroad coming in under an elective system, electing to come in under it, and this point was made in some fundamental matter which might affect that railroad, that it is not regulation at all if it is not compulsory, and it should be determined by the Supreme Court that a regulation to be a regulation must be binding, what would be the condition of that railroad, having gone out from under its State charter and having accepted an election to go under a United States charter, and that whole system upturned by the Supreme Court of the United States because it was not a regulation at all of commerce?

Nor do we think that this situation is met by the fact that in all charters which Congress has granted there has been an election on the part of the persons to whom it was granted to accept or reject it. We think that that situation differs fundamentally from the situation with which we are dealing. I will take the charter of the North River Bridge across the Hudson River, which was granted some years ago by Congress, and which went up to the Supreme Court of the United States and is reported in One hundred and fifty-third United States. There Congress passed upon the desirability of that individual enterprise, the crossing of the North River at the points indicated in the charter, and said that that special thing, that special construction, that special facility would promote commerce. And so in every other character which has been granted, and which was subject to acceptance or rejection, Congress has there undertaken to pass upon individual enterprises which were helpful or not helpful to commerce. But suppose we are dealing with everything in the country; suppose we are not dealing with facilities which Congress passes on as helpful or not helpful, but have come to deal with a system—merely comes to deal with a system of regulation which will apply not only in approved cases, in existing cases, but in all cases, we come then to base our proposition upon a system of national incorporation, wherever it may apply, and to apply everywhere. In that case the thing that Congress passes on is the desirability of the system and not the desirability of the individual enterprise which it approves. It does not undertake to indorse this bridge across the North River. It does not undertake to indorse the charter of the Union Pacific Railroad, but it undertakes to abandon the individual enterprise and apply its adoption of a rule of regulation to the system of incorporation or nonincorporation.

So we say that cases radically differ, and that the principles which would sustain the elective character with respect to a special thing can not be relied upon to sustain an elective system of incorporation universally applicable not only to existing railroads, but to any that may be built in the future. And so we believe that, speaking from the constitutional standpoint, it is necessary to the soundness of the system of incorporation that it shall be compulsory and not elective.

But we are also influenced in our recommendation for a system of compulsory incorporation by the practical consideration that Congress will not likely be willing to say to all the railroads discontented with their State charters, "Here is a national refuge for you," but to all those who have specially favorable relations under the existing State charters, "You can stay where it is better for you." We think, too, that Congress will not say to the railroads,

"Those who prefer the national incorporation can have it while those who have special refuge under the powers of any of the States can retain that." We believe that if Congress adopts a system of incorporation at all it will make it uniform and will not permit this power of election between the various railroads of the country.

Now, gentlemen, this idea of incorporation has grown in this country. I have in my hand a report of the Committee of the National Association of Railroad Commissioners, composed, I believe, of all the commissioners of all the States as well as of the commissioners of the United States. They referred this matter to one of their committees. I assume it was done a year ago; I do not know. But within the last week a report has been made by that committee. It is true that the association has not passed upon the report. It has put it over for another year, but the report has been made. It has been made by the State commissioners. It is unequivocal in its terms and is an expression by them of the necessity for a system of national incorporation. I will read a summary of their conclusions:

In conclusion we herewith summarize our views and present the following recommendations:

First. That the Interstate Commerce Commission be given the power to regulate the stocks and bonds of the interstate carriers.

Second. That the Interstate Commerce Commission, or some other Federal agency, be empowered to regulate the rates, practices, stocks, and bonds of the interstate public utilities.

Third. That Congress enact the necessary legislation to provide for a national incorporation act for interstate railroads and interstate public utilities.

Fourth. That the Interstate Commerce Commission be empowered to exercise jurisdiction over mergers, consolidations, and encumbrances of interstate railroads.

Fifth. That the Interstate Commerce Commission be given authority to exercise jurisdiction in receivership proceedings preferably to the fullest extent, but at least over all matters relating to capitalization.

Sixth. That Federal and State statutes be amended, where necessary, to permit of issues by railroads and public utilities of a common stock without par value.

Seventh. That the Interstate Commerce Commission and the Public Utility Commission be permitted to invoke the aid of the Federal Trade Commission and determine the reasonableness of cost of essential materials of railroad and public utility construction.

Eighth. That adequate legislation be enacted, both national and State, to provide for voluntary wage agreements, methods of arbitration, and for Federal and State intervention in emergencies, to adjust wage conditions in the railroad and public utility service; nothing contained in such legislation to require men to work against their will.

Ninth. That such legislation as is consistent with public interests be enacted for the enhancement of railroad credits and for the protection of American railroads against competition in the American market for funds for private exploitation in foreign countries.

Tenth. That a new committee be appointed by this association to study the question of the relationship between the Government and the railroads, to consider the possibilities of cooperation between the Government and the railroads, and report to this association at its next annual meeting.

EDWIN O. EDGEWORTH (*Chairman, California*).

JOHN F. SHAUGHNESSY, *of Rhode Island*.

WILLIAM C. BLISS.

I have the States from which these gentlemen come, but I have not got it here, so I can not attempt to state with accuracy:

Paul B. Framell—

I know he is from Georgia.

Clyde B. Atchison—

Mr. Atchison concurred in part.

Joins for the purpose of bringing the report before the convention.

I concur in the recommendation for Federal control of the issuance of railway securities.

JUDSON C. CLEMENTS.

Now, gentlemen, we can not ignore such testimony as that. Whatever may be done by that commission at a future meeting—I mean, by those commissioners at a future meeting—here is a report of their committee, made after a year's study, as I suppose, in which they indorse as a national necessity the idea of national incorporation.

The CHAIRMAN. Was there any dissent to that report?

Mr. THOM. Only such as I have read. One of the commissioners said that he concurred in part, but he did not say in which part.

Mr. ADAMSON. Is there any explanation as to why it was not adopted by the convention?

Mr. THOM. I have not any, sir.

Mr. ADAMSON. I thought perhaps the context would afford some.

Mr. THOM. No; I think not. We think that a mighty truth was dawning on those gentlemen.

Mr. ADAMSON. But it seems it did not spread over the convention. That is what I am inquiring about.

Mr. THOM. No. Truth does not always spread at once, but it started out and is on the way.

Mr. ADAMSON. Some of them may have attained your constitutional view about the Federal incorporation.

Mr. THOM. I hope they did, because there could not be a sounder one, in my judgment.

Mr. ADAMSON. I have more confidence in that thing than in anything you have read.

Mr. THOM. I will have something else to read to you on that subject before I have concluded my argument.

Now, that, in brief, is the suggestion we shall make to this committee on the subject of incorporation.

Our third suggestion would be—but before arriving at that third suggestion I wish to state that I do not for a moment contend that this railroad problem will have its panacea by the mere concentration of authority in the hands of the National Government. It will be helped; it will be simplified; it will be robbed of a great many of its dangers; but there still remains an unsolved problem. It will be necessary, in addition to that, to perfect, to strengthen, and to reorganize the principles of Federal regulation. The object of getting it into the hands of one body is to have it where its processes can be readily controlled and readily perfected, so as to work up to a real solution of this problem; and I want, just here, to digress, to say that if all we propose is done, there will not be, by virtue of that act alone, a single cent of additional revenue brought to us.

We are not asking this committee or asking Congress to pass upon the sufficiency of our revenues; we are not asking them by act or by any act that you shall recommend or that Congress shall pass, to increase our revenues. We are simply asking that you shall perfect machinery that can readily and adequately respond to a condition which, in the public interest, will require an addition to our revenues.

We are asking for the perfection of a system that will take into consideration what at any time we need in the public interest, and which will be wise enough and independent enough to pass on that question in the way the public interest requires. So that any effort to make this a rate hearing ought not to be entertained, because we are asking nothing herein in respect to rates; we are asking only a perfection of the system which shall pass upon that and every other matter which concerns the efficiency of these instrumentalities up to the standard of the public requirement.

Now, passing to the Interstate Commerce Commission, we shall ask you to favorably consider this as the third proposal:

The Interstate Commerce Commission has, under existing law, too much to do, and is, consequently, forced to confide to subordinates important functions which the regulating body ought to be in a position to perform itself. The Interstate Commerce Commission is likewise clothed with different functions which are inconsistent and which violate the principle that the legislative, executive, and judicial departments shall be kept separate and distinct. To reduce the pressure upon the Interstate Commerce Commission and to separate these inconsistent functions, there should be withdrawn from the Interstate Commerce Commission all duties except those which are judicial and constructive, such as the power over rates and routes, the powers affecting the revenues of carriers, and the remaining duties, being mainly those of supervision, detection, prosecution, and correction, should be conferred upon a new commission, which may be named, for convenience, "The Federal Railroad Commission." In order to coordinate and harmonize the system of regulation, the Interstate Commerce Commission should be made the supreme regulating body and should have the right of review of any order made by the Federal Railroad Commission. The salaries of the members of the Interstate Commerce Commission should be increased, and their terms of office extended. The salaries of the members of the Federal Railroad Commission, who should be appointed by the President and confirmed by the Senate, should also be made adequate, and they should be given a long term. Regional commissions should be established, which should assist the Interstate Commerce Commission in exercising its jurisdiction, and, to that end, should make all such investigations and hear and determine all such complaints and perform such other duties as the Interstate Commerce Commission may, from time to time, by general or special order direct. The members of these regional commissions should be presidential appointees at adequate salaries and for long terms. The orders of the regional commissions should not become effective until approved by the Interstate Commerce Commission, but should stand approved, as of course, unless excepted to within a time to be limited. The regions should be created with reference to lines and systems of transportation, and need not be defined geographically. Each regional commission should be located at such place in its district as the Interstate Commerce Commission directs; but it should be authorized to hold its sessions and perform its duties in any other district, when so directed by the Interstate Commerce Commission.

This proposal has to do with the reorganization of the Federal system of commission. The foundation of our national liberties is the separation of what are termed inconsistent functions of govern-

ment. You have one judicial department; you have one executive department which is not judicial and not legislative; you have one legislative department which is not judicial and which is not executive. The ideal of free government is that those functions shall be kept distinct from one another. It was thought that if a legislator should be a judge there would be no use for a judge, because he would sustain his acts as a legislator, and so with these other functions; in order to be useful, each department must be protected from the invasion of the other. And yet we find that whole and wholesome government principle is violated in the present organization of the Interstate Commerce Commission. They are judges; they are, in a measure, legislators; and they are administrators of the system of regulation. We feel as long as men are human that they will go to the exercise of one of these functions influenced by the functions that they are performing in another one of their duties. We think that if there is a question, constructive in its character, relating to all the railroads, it is unfortunate for that question to be determined in an atmosphere which has been created by having that commission walk out of the next room, where it has been investigating what is said about the Alton and the Rock Island and the Frisco railroads; we feel that human nature can not leave in the adjoining room the impressions which they have got in the exercise of their detective, corrective, and punitive functions and come helpfully to the consideration of matters which go to the very vitals of the whole system of transportation. We feel that men ought to exercise one of those functions who do not exercise the other; and, as the matter of building up the system of transportation in this country is of the first and most fundamental importance to the country and to the public, the men having it in charge ought not to be embarrassed, ought not to be limited, ought not to be influenced by any abuse which they have found in some single road; and yet, in the nature of things, all these things that are wrong are spread over all of the railroads of the country—guilty or innocent.

Now, bear in mind that I am not asking you in any way to surrender any part of your corrective jurisdiction; I am not advocating your taking away from the regulating bodies any part of the power they have to correct abuses; but I am advocating a system which will prevent the great good that will come to the people from a successful system of transportation being in any way affected or obscured by the inconsistent functions of the body that does the regulating.

Now, as to regional commissions: We think that there is a sound underlying support for the popular desire that government shall be brought close to their homes. We believe that if you take the power to make State rates and put it in the hands of your national authority there will be increased reason for bringing your system of regulation to the doors of the people, so that their needs, their aspirations, and their commercial conditions shall be considered and shall be passed on by men resident among them.

We think, however, that that deference to local wants, that consideration for local conditions, ought not to destroy a coordinated regulation; but, while there is just interest of localities to have their needs appreciated, there is also a just demand on the part of localities

that they shall do their commerce on terms equal to the terms which are granted to any other people anywhere in this country, and that in consequence these regional commissions ought to be established in these transportation regions, ought to live there, ought to hold their sessions there, ought to take their evidence there, ought to reflect everything that is sound on local atmosphere, and yet that a local view, a local treatment of one part of commerce should be prevented by requiring their reports to the Interstate Commerce Commission, which could coordinate the regulation of commerce in all parts of this country and see that it is impartial.

The functions under our suggestion of these regional commissions would be like the functions of masters in chancery, who take the evidence and make the report, and the report lies subject to exception. The exceptions only are argued before the court. The exceptions under our suggestions would be the only thing argued before the Interstate Commerce Commission, unless in a special case they should direct otherwise. This would take from the Interstate Commerce Commission an immense burden of work and would concentrate the controverted matters between them to those that the two parties agreed were to be controverted by having an exception filed. In that way the commerce of this country could depend for its original consideration on men of the dignity and ability that would be appointed by the President and confirmed by the Senate. And the commercial interests of this country would then not be dependent upon examiners who are low-salaried officers, but in all matters of controversies they could, by operation of law and by right of the statutes, go on these exceptions and argue the matter before the commission itself.

Our next proposal will be that the power of the Interstate Commerce Commission over rates should be extended so as to authorize it to prescribe minimum rates in addition to its present power to prescribe maximum rates. And it should also be given the extra power to determine the relations of rates or differentials whenever necessary or appropriate to establish or maintain a rate structure or a relation or a differential found to be just and proper by the Interstate Commerce Commission.

I hope it is apparent from the argument I have so far presented that the public have as deep an interest in having the revenues of these carriers adequate to the furnishing of an efficient and sufficient public service as the carriers have. The public depending on any special railroad can not with equanimity view a situation where the revenues of that road are so inadequate as to affect the standards of the public service that the people are getting there. There is as distinct a public interest, I repeat, in the community to have the revenues of the carriers sufficient to guarantee a proper service as any interest the carriers may have, and greater, because public interests are always greater than private interests.

Moreover, here is a community served by a railroad which does its business with a great market; here is another community served by a different railroad doing its business in the same market. It is of vital importance to justice in commerce that the terms on which those two communities can reach that market should be equal. If it is in the power of one of the roads to give to its communities terms which will be temporarily advantageous, lower than the other road

will give to the communities it serves, then there is an inequality of commercial opportunity which is indefensible.

As long as the minimum rate is not regulated by Government the two conditions will follow; one is that the struggling railroad, which is anxious to keep its head above water, will be at times willing to depress its rates so as to attract a temporary business, and thereby deplete its opportunity for a continuous and permanent and a reliable service to the communities which it serves. That is one of the consequences. The other consequence is that unless the minimum rate is regulated it is in the power of these two railroads to give different commercial opportunities to the communities they serve. Now we believe that any righteous situation ought to take hold of that minimum rate and control it in the public interest just as much as the maximum rate; that it ought to be able to say whether or not one community on one railroad is to receive commercial opportunities which are denied to a community on another railroad; and that it ought to be able to say, "If you are going to take charge of the instrumentality of interstate commerce and make it efficient for the needs of all the people, you ought to be able to say that its revenues shall not be depleted unjustifiably and unreasonably by making the rates too low, so that the result is simply a depletion of revenues at the same time that it produces inequality of commercial opportunity.

In our fifth proposition we attempt to have introduced the principles of protection to these carriers, the principle of the protection and maintenance of their credit by prescribing some of the things that the Interstate Commerce Commission must take into consideration when it fixes the rates of the carriers. No. 5 is as follows:

It should be made the duty of the Interstate Commerce Commission in the exercise of its powers to fix reasonable rates, to so adjust these rates that they shall be just at once to the public and to the carriers. To that end, and as a means of properly safeguarding the credit of the carriers, of protecting the just rights of the owners, and of providing a basis for additional facilities from time to time as the needs of commerce may require, the Interstate Commerce Commission should be required, in ascertaining and determining what is a reasonable rate for any service, to take into account and duly consider the value of the service, the rights of the passenger, shippers, and owners of the property transported, the expenses incidental to the maintenance and operation of the carrier's property, the rights and the interests of the stockholders and creditors of the corporation, the necessity for the maintenance in the public service of efficient means of transportation, and for the establishment from time to time of additional facilities and increased service, and in addition thereto any other considerations pertinent to be considered in arriving at a just conclusion.

That is part of No. 5. I will read the balance in a moment.

The purpose that we have in view in presenting that as a recommendation is to secure a legislative mandate to the regulating body that there are certain things essential in the public interest, among them a principle, among them is the establishment of adequate railroad facilities and the assurance that those facilities will grow as commerce grows and the public needs increase. That they shall

take that as one of their guiding principles in exercising their function of rate making. That they shall realize that they are deputed by Congress as an instrumentality of government, charged with the responsibility of seeing that the instrumentalities of Congress are made and kept as efficient as the public interest requires. We say that can not be done without having reference to the credit of the carriers, and therefore in fixing their principles of rate making they must have due reference to the kind of credit that the public interests require; that the carrier should have a properly fixed revenue with reference to that as one of the standards.

We say further that, as the public is interested in the matter of the net return, in the encouragement to capital, in the provision of a surplus in prosperous years to meet, the efflux in lean years, that there should be a legislative mandate that the expenses to which the carrier must submit in the way of providing this public service must be taken into consideration when you fix the amount of their revenues and thus protect the net in which the public is interested as much or to a greater extent even than the carriers themselves. I say as much or more, because the carriers at last, when they are unable to do these things that the public interests require, have at least the refuge of having the Government buy the properties and take over the burden itself, whereas the public must meet the problem of sufficient transportation facilities, either under a system of private ownership or under a system of Government ownership.

The remaining part of No. 5 is this:

The power of the commission to suspend rates should be confined to 60 days from the date the tariff is filed. If the commission is not able within this time limit to reach a conclusion, the rate should at the expiration of that time be allowed to go into effect with appropriate provision for reparation for the period not exceeding one year in case the rate should subsequently be declared to be unreasonably high.

I have no doubt that that clause will give rise to considerable difference of opinion, but we believe that that can be sustained by the measure of the public interest, like the other matters that we have suggested. The other proposals that we are making can be sustained. Always remember that the greatest public interest is in facilities; always remember that the greatest public interest is in the assurance of the continuance of the carrying on of commerce. Now, suppose that the present provision in regard to suspension of these rates for 10 months should continue, and let us take the case, first, where at the expiration of 10 months it is found that the proposed rate is a just one and should have been put in effect from the beginning.

The first consequence of that is that for the period of 10 months the carrier has been deprived of a legitimate earning of a legitimate income. There is no power on earth to give that to it again. It is gone. It is irretrievably gone. Now, under the supposition that it was entitled to it from the start, the loss to it must be felt in some direction. It must be felt either in some other part of the traffic bearing the burden which ought to be shifted to this, which violated the principle of equality among the patrons of the railroad; or if it can not be shifted to some other class of that traffic, it means an impaired capacity on the part of the carriers to meet the public needs in regard to facilities. It puts the public short somewhere, either by transfer onto some other part of the public of a burden

which ought to be borne by this traffic or by depriving the public of a proper basis for additional facilities or for adequate service, which is their prime need and to which they are, as a fundamental matter, entitled. Now, this is the case of where the suspended rate is found to have been a reasonable rate from the beginning. Now, let us take the other case, the case where it is found that the rate proposed is an unreasonable rate and ought not to be allowed. In that event our proposal is that we shall keep our books in such a way that where we have charged during that period from the very beginning more than we are entitled to charge, that we should be in a position to make the refund to the shipper that has been overcharged. It is impossible, if you suspend for 10 months and the rate is a reasonable rate, to repay us. It is not impossible, if you suspend for 60 days and the rate is declared to be unreasonable, for us to repay the shippers. We take the view that that is the most equitable method of dealing with that question of suspension, and we take the view that that is the method of dealing with it which is best in the public interest.

The sixth proposal that we shall make is:

That the Interstate Commerce Commission should be vested with the power and it should be made its duty to provide, upon the application of the Postmaster General or any interstate carrier, reasonable rates for all services and facilities connected with the carrying of the United States mail.

That proposal is so clear and the whole subject is so much in the minds of Congress at this time that it is unnecessary for me to enlarge upon it now.

Our seventh proposal is:

There should be in the Federal Government the exclusive governmental power to supervise the issue of stocks and bonds by railroad carriers engaged in interstate and foreign commerce.

I have argued that proposal at length during the remarks which I have had the honor to submit, and, therefore, it is unnecessary now for me to detain you at this period of the discussion with any elaboration of it.

Eighth:

The law should recognize the essential difference between the things which restrain trade, in the case of ordinary mercantile concerns, and those which restrain trade in the case of common carriers. While the question of competition may be a fair criterion in the case of ordinary mercantile concerns, it is not a fair criterion in the case of common carriers. In the case of carriers the test should be whether common ownership or control promotes trade and commerce, by affording facilities for the interchange of traffic, or by supplementing facilities for transportation, to a substantial or greater extent than such common ownership or control restrains trade by suppression of competition.

You gentlemen will appreciate that no railroads can cross each other, can closely approximate each other without crossing, or can form one continuous straight line without there being competition between them. When they cross there is an area around the point of intersection which can get to the markets of the world over either one of them. When they closely approximate each other, coming close enough for traffic to be delivered to one or the other, then, within that region where a common service or common public service exists, there is competition, because the commerce in that zone can reach the markets of the world over either. Where railroads meet in a city and one goes out due north and the other goes out due south,

their connections are such that a market anywhere can be reached by commerce taking either one of those railroads. So that there is a necessity of competition in respect to the railroad business at these points to which I allude, which does not exist in mercantile concerns. Moreover, those two railroads that meet end on, or that are so situated toward each other as to furnish an available means of carrying forward on the one railroad the traffic originating on the other, they so supplement each other in the facilities of transportation that the service they render as connections is vastly greater than the competition which exists at the point at which they meet. The facility of having commerce pass uninterrupted from one of these connecting railroads to the other is a valuable facility where it is a natural condition, and when we come to ask what the public interest is we must necessarily balance what these two railroads do in the way of suppressing competition against the advantage they offer in the way of supplementing transportation.

Now, we say, therefore, that that is a matter plainly demonstrable in the public interest, and that that is a test plainly applicable to the laws which should be made to apply to them.

What is the greater public interest? Is the greater public interest to keep its rates separate because there is some competition suppressed, or is it in the public interest to have those railroads unite because they are naturally supplementary to each other and they furnish additional and needed public facilities?

Now, we believe that the determination of that question ought to be put into the hands of the Interstate Commerce Commission and that they ought to be required to determine it on the principles which I have stated, of public interest as shown by supplemented and improved facilities on the one side, or by the suppressing of competition on the other. We say more than that, that this matter of suppressing competition, of restraining trade, of enforcing hard and burdensome terms of transportation, is taken out of the hands of these carriers because you regulate them by your public bodies. The reason for your antitrust laws in respect to other mercantile matters is because of the hardship that great combinations may put upon the people. At least, as to the terms of transportation, it is impossible to put hardships upon the public, because those terms are prescribed by public authority. Of course there is still the question of service. That matter would have to be determined by the Interstate Commerce Commission as one of the elements of determining what the public interest is. But when you have applied to the affairs of the railroads the strong regulating power of one of the departments of government, the same conditions do not apply to that; the public is not menaced by the same dangers in respect to that as it is by an entirely unregulated private business, and these essential differences, we think, ought to be recognized in the system of regulation which you will adopt.

9. The law should expressly provide for the meeting and agreement of traffic, or other officers of railroads in respect to rate practices. This should, however, be safeguarded by requiring the agreement to be filed with the Interstate Commerce Commission and to be subject to be disapproved by it.

Now, gentlemen, no man acquainted with railroads, with the necessity for them to make joint rates and through routes, can for a moment doubt the absolute necessity for the authorities of the two

roads to meet and agree upon the joint rate and the through route. There can be no such thing as a joint rate and a through route without agreement unless made by law by the authority of the Interstate Commerce Commission. The law requires that to be done by the voluntary action of the carriers. It is impossible to have that voluntary action unless they can meet and agree. But the interest of the public does not end there. The interest of the public is equality of terms of doing business. When two railroads serve the same market; when two railroads tap the same producing territory, there is a valuable interest on the part of the public that those whom the railroads serve shall have equality of terms. The philosophy of that principle of transportation is universally recognized even by the regulating authorities, and in order to have the equality of terms the traffic officers are obliged to meet and to make known to each other what the terms are. Of course you appreciate that an unrestricted power of agreement may open the doors to abuses, but our proposition is that all these abuses and opportunities for abuses can be obviated by requiring these agreements to be filed with the Interstate Commerce Commission before they shall become valid, and be subject to be disapproved by that body. I make a difference between subjects to be disapproved and subjects to be approved because the time for approval means delay; whereas the power of disapproval is a power sufficient to meet the chance of abuse. I believe you will find, if you ask the interstate-commerce commissioners, that such an arrangement with regard to the meeting of the traffic officers is in their opinion essential to the carrying on of business in a fair and equitable way between various communities.

Now, gentlemen, I have not included in the proposals which we shall make to you any suggestions on the labor question. All these things that I have read were agreed upon by us before this labor situation became such a menace to the commerce of the country. When we prepared for these hearings we did not expect to introduce that subject, notwithstanding its importance, because of its hotly contested character. It may be that recent events have put the labor controversy in such a situation that Congress will have to confront it and to deal with it. Whether that will be done by this committee or by some other committee of Congress, we are not advised. Therefore, for the present, I shall make no suggestions in respect to the labor situation because it seems to me that that situation ought to be met when it arises, and after proper opportunity for exchange of views in regard to various proposals.

I have now, then, gentlemen, laid before you with the frankness which this great situation demands, and with the frankness with which I attempt to treat every public subject with which I come in contact, so that you may know entirely the views that we entertain and the proposals that we shall make, and so that witnesses who shall appear here will have the full benefit of the things which we think are wise to be done by this Congress. It may be that in the light of what shall be developed before you we shall take a different view on some of these questions. I do not anticipate that, but we can at least assure this committee that we will approach any suggestion which is made from any source with an open mind and always with a purpose to have it determined by the standards of the public in-

terest which we have asked to be applied to all the proposals that we ourselves have made.

I now come to a part of my presentation which is a matter of profoundest interest to me. I come to present to you the views of a man occupying a position of supreme authority with the American people. He has lived a long life. He has ornamented and led, and still ornaments and leads, the American bar. He has held high office from which he retired with an untarnished name and with a reputation established and safe in American history. He entertains the democratic view of the rights of the State. He occupied no position of a professional or other character to this investigation except the position and the character of an eminent American citizen. It has been impossible to induce him to leave the honorable retirement into which he went by even the offer of the ambassadorship to the Court of St. James, which I understand was recently made to him. He stands out before the American people as a great lawyer, a great Democrat, and a man who occupied with distinguished credit to himself and benefit to the people, the offices of Attorney General and Secretary of State in Mr. Cleveland's Cabinet. I refer to Mr. Richard Olney. Unfortunately, his condition of health does not permit him to appear before this committee, but I have from him this letter:

BOSTON, November 23, 1916.

ALFRED P. THOM, Esq.,

*Counsel Railway Executives' Advisory Committee,*

*1360 Pennsylvania Avenue, N.W., Washington, D. C.*

MY DEAR MR. THOM: For reasons you are familiar with, it is quite impracticable for me to appear before the congressional committee at Washington for the purpose of expressing my opinion as to the desirability, perhaps I should say necessity, of the National Government proceeding without delay to insist upon national railroads being owned and operated by national corporations.

But, if my opinion is of any value, I believe it will not lose but gain if stated in writing rather than by word of mouth. The inclosed "Memorandum" is an attempt to put the matter in a little more orderly shape than I have put it heretofore. You are, of course, at liberty to make whatever use of it will serve the object you have in view, in which, personally, I thoroughly believe.

Very truly, yours,

(Signed)

RICHARD OLNEY.

The memorandum reads as follows:

A MEMORANDUM BY MR. RICHARD OLNEY.

1. For all the purposes and functions of commerce between the States of the United States, between such States and the Territories of the United States, and between such States and Territories on the one hand and foreign nations on the other, the United States is one country with complete and exclusive jurisdiction over the whole subject—and State lines and jurisdictions are without significance.

2. Commerce, in the constitutional sense, covers transportation and intercourse in all forms and whether existing when the Constitution was adopted or since introduced and practiced.

3. The national commerce power, being of such extent and exclusiveness, necessarily subjects to national regulation and control all the agencies and instrumentalities by which national commerce is carried on.

4. It can not be doubted that a railroad corporation created by a national charter is an apt instrument for the carrying on of national transportation and that the organization of such corporation, with all appropriate powers and duties, is a fit subject for treatment under the commerce power.

5. Nor is it to be doubted—because ample experience has shown—that, in this matter of national transportation by railroads, public policy and the public welfare are at one with the law of the country. They imperatively require that

the subject should be dealt with in all its phases by a single authority which can be no other than the Nation itself. The mixed jurisdiction over the subject now prevailing—the States exercising a part mostly through State charters and the United States a part mostly through the commerce power—is thoroughly archaic, originated before the true scope of the commerce power was generally understood, and has resulted in a serious waste and inefficiency in railroad operation which is at once matter of public notoriety and public scandal.

6. In view of the settled law of the land as respects the national commerce power—as by virtue of it the United States practically undertakes to exercise the power for the benefit of the several States and of all the people—and as transportation by railroad is within that power and is to-day in a condition most unsatisfactory to the private owners of railroads as well as seriously prejudicial to the national interests, the question is of the remedy for that condition.

It may be claimed that Government ownership of all national railroads is the only true and adequate solution, a claim which time and sufficient experiment may show to be well founded. Yet Government ownership would have political bearings of such pith and moment as ought to prevent its consideration until and unless it is established that there is no other way out. It is best to assume in the first instance, therefore, that here is some other way out; that the question is essentially administrative rather than political; that it concerns our national housekeeping rather than the structure and stability of the house itself.

7. If the correctness of the foregoing premises be assured, and if it be also conceded, as apparently it must be, that national control of national transportation by railroad can be secured in the most simple, direct, and effective manner by requiring all parties who undertake it to take out national corporate charters, the real and practical question is one of procedure.

How shall the United States rid itself of the present order of things and substitute the desired new one—how eliminate any present State control of national transportation by railroad and substitute for it exclusive national control, through national incorporation of the parties undertaking to carry on such transportation? Congress, of course, must enact necessary and appropriate legislation. What must be its essential features?

8. The practical situation is complicated and difficult, because, as a whole, the interstate-commerce railroads of the country are to-day owned and operated by State corporations under State charters. Thus (apart from the general public) the parties interested in the displacement of State railroad corporations now doing a national commerce business by national corporations are, first, the States granting the existing charters, and second, the stockholders and creditors of such State corporations. If the assent of these several parties could be counted upon, the change from the present status to absolute national control of national transportation by railroads through the medium of railroad corporations with national charters would be easy. But such assent, for obvious reasons, is not to be taken for granted, and the question is how shall the United States proceed to accomplish the desired result without such assent.

(a) To consider first the right of the States and the State corporations—each has granted franchises enabling a railroad corporation of the State by the use of them independently or in connection with franchises granted by another State or States to operate a national railroad. The franchises have been accepted so that there is an apparent duty on the part of the grantee to execute them and an apparent right of the grantor to insist upon their execution. If the right and duty were real, only the power of eminent domain could take away the grantor's right to claim full performance or impair the grantee's duty to make such performance. But on the legal grounds already developed a State grant to a State corporation of the franchise to operate a national railroad must be regarded either as void ab initio or as provisional merely and as becoming void whenever the National Government acts upon the subject. Consequently, neither that State nor the State corporation would be legally aggrieved if a grant to a State corporation of the franchise to operate a national railroad were annulled by a grant by the National Government of an identical franchise to a national corporation.

(b) Such being the settled law of the land as respects the national commerce power and its application to national transportation by railroad, it is not only the right but the duty of the United States to exercise the power if the national welfare demands it. In various instances the National Government has by inaction acquiesced in the exercise of State authority over matters exclusively

within the national jurisdiction. In such cases the theory of the courts has been that State action should not be invalidated so long as the National Government continued to impliedly approve of it, while the policy of the National Government has been thought to be justified by the view that State action on the subjects concerned would be likely to be more intelligent and effective than action by the Nation. So far as national transportation by railroad is concerned, however, no questions of that sort need be discussed. Its unsatisfactory condition is admitted on all hands—is bitterly complained of by the private owners of railroads and is notoriously prejudicial to the national interests—so that the clearest possible case exists for the affirmative use by the National Government of its knowledge power over the whole national railroad situation.

(c) Feasible and adequate legislation for putting a national railroad now operated by a State corporation into the possession and control of a national corporation must not only authorize the latter to operate such road, but should also provide the ways and means by which the new corporation shall succeed to and acquire the tangible railroad property essential to and actually in use in the operation of such road.

Such property—the entire railroad plant, including roadbed, rails, stations, shops, telegraph and telephone equipment, and all other railroad property and appliances employed in the operation of the national railroad concerned—should pass from the old State corporation to the new national corporation as a unit, as a going concern. It can not be thus conveyed to the new corporation by the United States because the United States does not own it. It belongs to the old corporation and its stockholders, whose ownership is absolute except so far as their creditors may have claims on it, and neither owners nor creditors can be deprived of their interests in it except by their assent or through an appropriate exercise of the power of eminent domain.

(d) Congressional legislation aiming to substitute national corporations for State corporations in the control and operation of national railroads would obviously be ineffective if conditioned upon the consent of all parties in interest.

It follows, unless the suggestions above made are unsound, that a national statute for the displacement of a State corporation by a national corporation as the owner of a national railroad should cover the following points:

First. Incorporation of certain designated persons with powers to acquire, hold, and manage all the franchises and property of the old corporation and with power to dispose of the capital stock of the new corporation as hereinafter indicated.

Second. Amount of capital stock to be same as that of old corporation except that the organizers in their discretion may make the amount larger or smaller.

Third. Debts and obligations of old corporation to be assumed by the new with recognition of any liens and priorities of creditors already acquired as against assets of the old.

Fourth. Stockholders of the old corporation, common or preferred, to be offered common or preferred shares or such other interests in the new corporation as, in the judgment of the organizers, will make their interests in the new equivalent to their interests in the old.

Fifth. Shares in the old corporation to be purchasable for the new corporation by the organizers on terms which they may deem fair and not injurious to other parties to the proposed organization; in the event of any such purchase shares of the new corporation to be sold by the organizers to an amount sufficient to enable them to pay the agreed price.

Sixth. Shares of the old corporation not obtainable by exchange or purchase as above provided to be taken by the new corporation at its option under the power of eminent domain at a price fixed by a court of competent jurisdiction or by such court and a jury at the election of the stockholder.

Seventh. The organizers to operate the national railroad concerned with all the powers of receivers of an insolvent railroad until a majority of the capital stock of the new corporation shall have been issued as hereinbefore authorized. Upon that taking place the organizers shall call a meeting of stockholders for the election of directors who, in addition to the powers of railroad directors generally, shall have the special powers of the organizers so far as the exercise of the same is necessary to fully accomplish the purposes of the charter.

The foregoing list is not claimed to be exclusive. But it is confidently believed that each one of them is a necessary part of any effective plan by which a national railroad corporation is to be substituted for a State corporation in the ownership and operation of a national railroad.

With a deference almost too great for expression, I must say that I am in complete agreement with all of that memorandum except as to the method necessary for the transfer of the State corporation to the national one. I am convinced, as to the latter, that a method much simpler is entirely available to accomplish this transfer, and at the proper time I shall ask an opportunity to develop that view before this committee. I feel that Mr. Olney has performed a great public service in contributing that thought to the solution of the immense problem which is before you.

I have tried, Mr. Chairman and gentlemen, to state with complete frankness the views which actuate us when we come to a consideration of this immense problem of transportation. I am profoundly grateful to you for the courtesy you have extended me and for the consideration you have shown during the tedious hours during which I have been obliged to ask your attention, and I now respectfully announce that the opening statement which I was delegated to make has been concluded.

Senator UNDERWOOD. Mr. Chairman, I suppose the committee desires to cross-examine Mr. Thom, but it is 1 o'clock and Saturday, and I move we adjourn now.

Mr. ADAMSON. Let us have an executive session.

Senator UNDERWOOD. Do you want an executive session?

Mr. ADAMSON. I think we do.

Senator UNDERWOOD. Then I move an executive session.

Mr. CULLOP. Before we go into executive session is it understood Mr. Thom is to appear Monday for cross-examination at the opening of the session?

The CHAIRMAN. It is so understood.

(The motion was agreed to, and at 1 o'clock p. m. the committee went into the consideration of executive business, at the conclusion of which an adjournment was taken until Monday, November 27, 1916, at 10.30 o'clock a. m.)



# INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT CONTROL AND REGULATION.

MONDAY, NOVEMBER 27, 1916.

CONGRESS OF THE UNITED STATES,  
JOINT COMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The joint committee met at 10.30 o'clock a. m., pursuant to adjournment, at room 326 Senate Office Building, Senator Francis G. Newlands, presiding; also Vice Chairman William C. Adamson.

## STATEMENT OF MR. ALFRED P. THOM, COUNSEL RAILWAY EXECUTIVES' COMMITTEE—Resumed.

The CHAIRMAN. The committee will now enter upon the examination of Mr. Thom on the matters concerning which he has addressed us, and the members of the committee, commencing with the chairman and vice chairman, will examine Mr. Thom in turn, according to their order, alternating between the Senate and the House, and later on, with the approval of the committee, I shall take occasion to reverse this order so as to give all the members of the committee a fair chance. It is my purpose to question Mr. Thom regarding the national incorporation of railroads, and with reference to certain bills which I introduced upon that subject from 1905 down to the present time, the bills being substantially the same, but varying in certain features according to the progress of the discussion.

With the consent of the committee, I will put in the record extracts from these bills, the views expressed by me in certain reports of the Interstate Commerce Committee, notably on the Hepburn bill and the Commerce Court bill, in which I took up the discussion of the question of the national incorporation of railroads, and also certain extracts from the hearings upon this subject, and later on I will invite the attention of Mr. Thom to, and will interrogate him regarding, this matter inserted in the hearings.

I also wish to insert in the hearing a magazine article of the North American Review, of April, 1905, entitled "Common sense of the railroad question," which dwells upon the subject of the national incorporation, and I invite Mr. Thom's attention to that.

Mr. ADAMSON. Mr. Chairman, is that article by the chairman?

The CHAIRMAN. Yes.

(The papers referred to are here printed in full.)

## NATIONAL INCORPORATION OF RAILROADS.

[Extracts from speech of Hon. Francis G. Newlands, of Nevada, in the Senate of the United States, Wednesday, January 11, 1905.]

Mr. NEWLANDS. Mr. President, in accordance with the notice I gave yesterday, I ask unanimous consent that the joint resolution creating a commission to frame a national incorporation act for railroads engaged in interstate commerce may be taken up for discussion.

The PRESIDING OFFICER. The Chair lays before the Senate the joint resolution referred to by the Senator from Nevada, which will be read.

The Secretary read the joint resolution, as follows:

*"Resolved, etc.,* That a commission consisting of fourteen members, one of whom shall be experienced in railroad traffic management, to be appointed by the President of the United States, one of whom shall be an attorney at law, to be appointed by the Attorney General, one of whom shall be an expert in transportation, to be appointed by the Secretary of Commerce and Labor, one of whom shall be an expert in transportation law, to be appointed by the Interstate Commerce Commission, five of whom shall be Senators, to be appointed by the President pro tempore of the Senate, and five of whom shall be Members of the House of Representatives reelected to the Fifty-ninth Congress, to be selected by the Speaker of the House, shall frame and report to the Congress of the United States a national incorporation act for railroads engaged in interstate commerce, providing among other things as follows:

"First. For the construction of interstate railroads throughout the United States, the amount of the bonds and stock to be issued by such corporations to be determined by the Interstate Commerce Commission, and not to exceed in any event the actual cost of such railroads;

"Second. For the consolidation of railroads now engaged in interstate commerce, the amount of stock and bonds issued for such consolidation to be approved by the Interstate Commerce Commission, and not to exceed in any event the actual value of the railroads consolidated, such value to be determined by the Interstate Commerce Commission;

"Third. For the increase of the issues of bonds or stock by such corporations for the purchase of connecting or intersecting lines, for new construction, or for betterment of the roads, the amount of such issue of stock and bonds to be determined by the Interstate Commerce Commission, and not to exceed in any event the cost of such new construction, the betterments, or the value of the intersecting or connecting lines acquired;

"Fourth. For the classification by such railroad corporations of all articles of freight into such general and special classes as may be necessary and expedient, and also the fixing of transportation rates for freight and passengers by such railroads, such classification and rates to be subject to revision and amendment by the Interstate Commerce Commission upon complaint of shippers and localities;

"Fifth. For the reasonable and just exercise of such power in classifying and regulating such rates of freight and fare by providing that such power shall be exercised by the Interstate Commerce Commission in such a way as to yield each railroad corporation a fair return of not less than 4 per cent per annum upon the value of its road and property, such value to be ascertained by the Interstate Commerce Commission;

"Sixth. For the hearing by such commission of complaints made either by such railroad corporations or other party at interest regarding the decision of any rate, classification, order, or regulation adopted by such commission, and for decision thereon;

"Seventh. For summary proceedings in the courts on the complaint of any railroad company or other party at interest concerning the decision of any rate, classification, order, or regulation adopted by such commission;

"Eighth. For the imposition of a percentage tax upon the gross receipts of all such corporations in lieu of all taxes upon the property of such railroad corporations and its stock and bonds, and in lieu of all taxes upon the bonds and stock of such railroad companies in the hands of stockholders, the property of such railroads and their bonds and stock to be entirely exempt from State, county, or municipal taxation, and for a just plan of distributing such taxes by the Federal Government among the States in which such railroads operate according to trackage or volume of business, or such other fair method as may be deemed advisable, such percentage to be so adjusted as to yield in the aggregate an amount equal to the taxes now paid by such railroads, and to be increased gradually through a period of ten years, until it reaches an aggregate of 5 per cent upon the gross receipts of such corporations;

"Ninth. For the correction of existing abuses, and for the prevention of rebates, preferences, and discrimination, whether relating to communities or individuals;

"Tenth. For the creation of a pension fund for railroad employees disqualified either by injury or by age for active service, by setting aside a percentage of the gross receipts of the railroads in a fund in the Treasury, to be invested according to rules and regulations made by the Interstate Commerce Commis-

sion, such pension system to be devised, changed, and modified from time to time by the Interstate Commerce Commission.

"Eleventh. For the arbitration of all disputes between such railroad corporations and their employees as to compensation, hours of labor, and protection to life and limb.

"Sec. 2. That the sum of \$5,000 is hereby appropriated for the expenses of such commission."

Mr. NEWLANDS. Mr. President, this joint resolution was introduced by me on the 4th of January of this year. It is the result of a hearing before the Interstate Commerce Committee of the Senate on the 18th day of December, just prior to the holidays, at which Mr. Bacon, chairman of the Interstate Commerce Law Convention, appeared and urged the passage of the Quarles-Cooper bill for the enlargement of the powers of the Interstate Commerce Commission. During that inquiry I questioned Mr. Bacon regarding a plan, which I have had under consideration for some time, as to the simplification and unification under one national taxing power and one national rate-regulating power, of the railroad systems of this country. After these inquiries were made, and the questions answered, there was some discussion among the Senators present as to the principles of this proposed national incorporation act, and it was suggested that I should bring the matter up for discussion in the Senate.

I therefore endeavored to frame a national incorporation act, but I found that in doing so I would be obliged to enter into a great many matters of detail not essential to the elucidation of the principles for which I contended, and I feared that if I should frame an elaborate bill more attention would be given to the details than to the principles. Therefore I concluded to draw up a joint resolution providing for the appointment of a commission, consisting of four experts in transportation and transportation law, five Senators, and five Representatives, and instructing them to frame and report to Congress a national incorporation act, prepared upon certain principles declared in the joint resolution. It is in reference to those principles that I wish to address the Senate to-day, in the hope that the subject may become a matter of discussion, and that discussion here may instruct the minds of the members of the Interstate Commerce Committee regarding this important question.

#### RAILWAY EVOLUTION.

Mr. President, we find that to-day in this country there are about 200,000 miles of railroad in the ownership and control of over 2,000 railroad corporations incorporated under the laws of the various States. We find that of those 2,000 corporations only about 600 are operating companies, the others by some method having come under control of these operating companies. As to these operating companies, we find that they have fallen under the control of certain systems. So that to-day it is a well-recognized fact in this country that almost all the railroad trackage of the country is under the control of 8 or 10 systems, each of which is under the absolute direction and control of either a single man or a group composed of a small number of men.

So, as a matter of fact, although our railroads are incorporated under State laws, the boundary lines of the States have been practically ignored in the evolution of railroads, and to-day we speak familiarly of the Harriman system, of the Hill system, of the Morgan system, and of the Pennsylvania system, each system covering not simply a single corporation, but many corporations joined together, often without express sanction of the law, by some method of lease or trackage or traffic arrangement or through holding companies, and each system under the absolute control either of one man or of a set of men.

I regard this as a natural and practical evolution of the railroad business, resulting, so far as the economic operation of the roads is concerned, in advantage and not disadvantage, and operating, so far as the convenience of the public is concerned, to their advantage and not to their disadvantage, and only likely to be operated against the interest of the country when we consider the questions of rates, or rebates, and of discriminations.

It is with reference to these matters, then, that the railroads should be brought under some form of unified control, and that unified control should be exercised in such a way as not to impair the initiative, the energy, and the enterprise of the operators of these great railroads.

#### NATIONAL POWER.

Now, I assume that if to-day there were no railroads in this country and the United States should conclude to enter upon the construction of interstate rail-

roads, under the interstate-commerce power of the Constitution, the power of the Government to do so would not be questioned. It has not only the power to regulate commerce, it has the power to create the instrumentalities for the exercise of that power; and if in its judgment it concludes to enter upon the building as a Government enterprise of interstate railways, for the purpose not only of exercising the interstate-commerce power of the Constitution, but the power conferred by the Constitution upon the General Government with reference to the mails and with reference to the military defense, I imagine the power would not be questioned.

I also assume that if the Federal Government constructed and owned these railroads as Federal instrumentalities for the exercise of national powers, the National Government would not permit them to be embarrassed or impeded in their operations by State legislation—by State legislation under the exercise of the taxing power, for the power to tax would involve the power to destroy; and the Government of the United States, as a sovereign, exercising its power on the soil of each one of the States, has the right to exercise it unimpeded and unembarrassed by the taxing power in the State.

So, also, I take it for granted that it would be unembarrassed by the rate-regulating power of the various States; that power which now exists over domestic rates, interstate rates, for that power, if exercised, would have a tendency to impede and perhaps destroy the Federal instrumentality just as much as would the power of taxation. It would probably impede and embarrass it even to a greater extent than the exercise of the power of taxation.

So, starting off with that assumption, comes the further assumption that if the Federal Government chooses to incorporate private corporations to perform the public service of the country, for the purpose of carrying out this constitutional power, it can also exempt such railroads in private ownership, but subject to public control, from any power of the States that embarrasses or tends to destroy the Federal instrumentality, just as much so as if it itself owned the railroads.

Now, then, assuming that the Federal Government has the power to incorporate railroad companies for the purpose of carrying out the interstate commerce power, and that these railroads can be exempted from local taxation and from local regulation, then we have the question unembarrassed. We have railroads organized under a national law, their stocks and bonds fixed as to amount by law or by the Interstate Commerce Commission, so as to prevent inflation or the watering of stocks and bonds; and we have one taxing power—the Federal Government; and we have one rate-regulating power—the Federal Government.

I insist upon it that in order to secure the proper control and regulation of the railroads of the country it is essential that we should not have a confusion of taxation and a confusion of rate regulation.

Mr. BACON. Will it interrupt the Senator if I ask him a question right here? If it will, I will defer it.

Mr. NEWLANDS. I would prefer it if the Senator would let me proceed consecutively, and then I will answer any question later.

#### STATE LINES SHOULD BE DISREGARDED.

It seems to me it must be manifest that if we are to have a system of railway extending from New York to San Francisco, running through 10 States, and if we are to apply the principles laid down by the Supreme Court of the United States as to the control over rates, and if we are so to adjust those rates in the exercise of the interstate commerce power as that there shall be a fair return to the corporations upon the value of their property, it is essential that there should be but one body to value and but one body to fix the return. And yet under existing conditions we would have 10 States exercising the taxing power regarding that system of railway, 10 States through their legislatures or their local commissions valuing the railroads, and 10 States fixing the return in the shape of interest upon the valuation.

It is impossible to assume that they will all come to the same conclusion, and if they do not come to the same conclusion we will have each one of those States fixing a different valuation upon the part of the road that goes through that State; each one of the States taxing the road upon varying systems; each one fixing a different return in interest upon the valuation of the road, and above and beyond all that, we will have the United States Government making its own

valuation through the Interstate Commerce Commission, and the United States through that commission fixing the rate of return in the shape of interest, and we will have varying rates of interest, interest varying all the way from 4 to 10 per cent.

\* \* \* \* \*

Mr. NEWLANDS. I also ask permission to insert in the Record three pages of the hearing before the Senate Interstate Commerce Committee on December 16, 1904, pages 11 to 13, inclusive, containing the examination of Mr. Bacon.

The PRESIDING OFFICER. In the absence of objection, the request of the Senator from Nevada will be granted.

The matter referred to is as follows:

"Senator NEWLANDS. Are you a lawyer yourself?

"Mr. BACON. I am not a lawyer; I am a business man.

"Senator NEWLANDS. Are you familiar with the rules the courts have laid down as to the determination of what shall be a just and reasonable rate?

"Mr. BACON. I have followed the cases to some extent as they have arisen under the workings of the interstate commerce act.

"Senator NEWLANDS. I am not very familiar with them, but I understand that they have determined that a rate must be reasonable and not oppressive, and that you must have in view a return upon the capital that has been invested.

"Mr. BACON. The Supreme Court has specifically decided that the revenues of a railroad company must be sufficient to afford a fair return upon the actual capital invested.

"Senator NEWLANDS. Have these decisions ever determined what a fair return, in the shape of interest, shall be?

"Mr. BACON. Each particular case has been taken up individually and considered on its own merits, and no definite percentage of interest or return upon the money invested has been indicated by the court as proper and right, so far as I have observed, but the court has decided that point in a general way—that it must be a fair return on the investment. That is something that may vary in different years.

"Senator NEWLANDS. Has any court, to your knowledge, ever laid down a rule for determining the capital or value upon which the fair return, in the shape of interest, is to be computed?

"Mr. BACON. No rule has been laid down, but different processes have been pursued in determining the cases before the courts—sometimes one method, sometimes two or three combined; but no rule has been laid down.

"Senator NEWLANDS. Take, for instance, a continuous system of railways extending from the Atlantic coast to the Pacific coast, embracing perhaps as many distinct railroads as there are States through which it passes, each one of these railroads being subject to control by a local commission as to domestic rates, and also being under control by the Interstate Commerce Commission as to interstate rates: I ask how would it be possible, in each individual case before the Interstate Commerce Commission under this act, to determine the effect of a given rate upon the capital or value invested in each of these roads?

"Mr. BACON. A case might be very complicated, as you suggest; still, it is not beyond human wisdom to arrive at a satisfactory conclusion. It may involve considerable time and the consideration of many figures, but it is not beyond human capacity, certainly.

"Senator NEWLANDS. Do you not think that with the number of cases before the Interstate Commerce Commission, involving both classifications and specific rates, and also with the number of cases that may be under consideration before each one of the local commissions as to domestic rates there would be considerable confusion as to whether or not a proper return upon capital or value could be had as a result of these changes?

"Mr. BACON. I do not think there would be any difficulty of that kind. The cases are easily susceptible of solution with proper time and consideration to be given them. But it is my judgment that with this authority conferred upon the Interstate Commerce Commission it would operate very fairly toward the prevention of the exaction of discriminative or unreasonable rates.

"Senator NEWLANDS. We all agree that that is what we want to have accomplished. The only question is as to method.

"Senator QUARLES. It would have to be worked out by the courts.

"Senator NEWLANDS. Yes; but in these cases we would have perhaps 10 different circuit courts operating at the same time in suits instituted by each one of these railroads, incorporated under the laws of different States, and each one of them complaining of a particular interstate rate fixed by the Interstate

Commerce Commission. It strikes me that this would be likely to produce a great deal of confusion. If we could simplify this whole system, it would certainly be of great advantage.

"Let me just suggest a line of thought I have been pursuing for some little time on this subject. It involves a radical change in existing conditions, but it seems to me that if it can accomplish good we ought gradually to reach out for it. It is this: We have here, say, 2,000 different railroads in this country—

"Mr. BACON. Only about 600 operating railroads, however.

"Senator NEWLANDS. Only about 600 operating railroads. A great many of these operating roads are classified and combined into systems, so that practically it may be said that 8 or 10 systems of railroads control all the mileage of the country. That is accomplished either through leases or holding companies or through traffic arrangements. As a matter of fact, however, we have this large number of corporations—although only 600 operating railroads, as you say—and these railroads are so unified that no more than 8 or 10 systems control them all.

"Mr. BACON. Substantially, yes.

"Senator NEWLANDS. That being the case, that being the evolution of railroad-ing, why is it not well to recognize that fact and bring them under control?

"Mr. BACON. That is just what we are seeking, Senator.

"Senator NEWLANDS. Let me suggest right there, would it not be well for us, then, to frame a national incorporation act for interstate commerce, under which these various railroads now consolidate under one management—by devious devices that no one understands—can be incorporated, so that we shall have one capitalization fixed by the Interstate Commerce Commission or by the courts, and one system of rates to act upon, as well as one system of taxation to act upon? It seems to me that the evil of the present system is that, while the Supreme Court has determined that there must be a fair return upon value or capital invested, yet you can have as many valuations fixed as there are States, and you can have as many rates of interest fixed as there are States, according to conditions.

"Then, upon the question of return; this return must be found after operating expenses and taxes are paid. And yet, under existing conditions, we can have 45 different systems of taxation, each of them variable according to the judgment of a legislature or according to the caprice of assessing bodies.

"It strikes me if we could have a national incorporation act for purely interstate commerce and permit consolidation of these great corporations with a capitalization fixed by law or judicially, and then provide for a percentage tax upon gross receipts absolutely in lieu of all other taxes—national, State, county, or municipal (regarding these incorporations as national machines for interstate commerce, the National Government would have the constitutional power to exempt them from State or local taxation)—and then provide that that tax shall be distributed by the United States among the various States according to some fair rule of distribution—according to trackage or volume of business—we would then fix absolutely the rate of taxation by one law, and that at the same time no State would be deprived of its revenue.

"Thus upon this question of operating expenses and taxes we would secure certainty as to taxation, at all events.

"The next step would be the fixing of the proper return upon capital invested. This law could fix the percentage of dividends to be allowed—whether 4 per cent, 5, 6, or 7 per cent, whatever it may be—and it could vary that return according to the degree of risk involved in the enterprise, etc., or it could leave the question of interest as a return on capital to the decision of the Interstate Commerce Commission or to the courts.

"Those things being fixed with absolute certainty (the taxes to be paid to the Government and the dividends paid to the operators), then you have remaining only the question of operating expenses, and it seems to me you would then have one body that would fix these rates and you would not be subject to the varying judgments of 45 different commissions and 45 different courts. What do you think of that, Mr. Bacon?

"Mr. BACON. That is a very comprehensive plan, Senator, and there is much merit in it, but it will take many years to work that out in legislation.

"Senator TILLMAN. I want to suggest to my friend from Nevada that he put this statement in the Record, for it is the most magnificent generalization that has ever come before me. So I hope he will repeat this statement in the Senate Chamber, because it will be lost to the public unless put in the form of a speech in the Senate on this general subject.

"Senator NEWLANDS. It will be in the record of the proceedings of this committee to-day, but I should like Mr. Bacon and his associates to look into that question; for while we may pass something of this kind as a temporary measure, I do not believe it will work satisfactorily as such. It strikes me that the minds of the shippers, as well as of the legislators of the country, ought to be directed to some plan of unifying and simplifying the entire railroad system of the country.

"Mr. BACON. That is entirely worthy of consideration with reference to the future, but it will take a long time to work it out. But here we have before us a very simple plan which has been evolved during the discussions of five years in regard to this class of legislation, and it seems to me that it would not be best now to take up any such comprehensive and general plan. Senators may work it out for themselves.

"Senator FORAKER. You would not indorse the plan suggested by the Senator from Nevada?

"Mr. BACON. Not on the moment's consideration. I am very glad, however, to have that suggestion.

"Senator FORAKER. So am I, but I should want to give it further consideration.

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"EXHIBIT 'A.'"

"UNITED STATES SENATE COMMITTEE ON INTERSTATE COMMERCE,

*"January 16, 1905.*

"ADDITIONAL STATEMENT OF MR. EDWARD P. BACON.

"Senator NEWLANDS. Mr. Bacon, I understand your position to be that you would like this bill (the Quarles-Cooper bill) passed, but you propose to follow it up by measures to be urged hereafter, with the expectation in the end to reach a scientific and comprehensive plan covering whatever is best in the way of railway legislation.

"Mr. BACON. That is my idea exactly.

"Senator NEWLANDS. I desire to question you a little about such a general and comprehensive plan, not with a view to delay the consideration of this particular bill, but with a view to seeing whether this bill, if it should pass, will fit into the general plan.

"Mr. BACON. It is the groundwork of the plan.

"Senator NEWLANDS. I questioned you the other day when you were before the committee regarding a plan that I had in mind for unifying and simplifying the railway systems of the country through a national incorporation law.

"Mr. BACON. I was very much interested in it.

"Senator NEWLANDS. That plan involved the valuation of the railroads by the Interstate Commerce Commission; a fixed percentage upon gross receipts, so that taxes would be certain, such taxes to be distributed among the States, and a return to the stockholders of not less than 4 per cent on the valuation fixed by the commission, so as to make dividends certain, thus leaving the profits from any increase in business to go largely to the betterment of the roads, the increase of wages, or the reduction of rates. Now, I desire to ask you whether you have thought over that plan at all since you were here last.

"Mr. BACON. I have read your remarks on that subject in the Senate with a great deal of interest, and I can say that they meet my hearty concurrence, and that great good will come from it if it can be worked out. But, as I said before, when you were interrogating me before the committee, it will take time to accomplish it. However, it is a good thing to have it under consideration, and I think the more it is studied and considered the more it will commend itself to the minds of those who study it. But it will take a long time to bring it about."

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[S. Rept. No. 1242, 59th Cong., 1st sess.]

VIEWS OF MR. NEWLANDS.

[To accompany H. R. 12987, 59th Cong., 1st sess.]

While I have joined in the report on House bill No. 12987, amendatory of the interstate-commerce act, and am in sympathy with its general purposes, and believe that it is well framed to cover its main purpose as to the regulation

of rates, I think it should be classed with the incomplete and fragmentary legislation regarding interstate commerce in which Congress has thus far indulged.

I believe that this is the time for full and comprehensive legislation. I do not believe that our legislation will be as effective as it should be unless it adds to the pending measure provisions for the national incorporation of railways engaged in interstate commerce, guarding against overcapitalization, fixing with certainty the rule for the taxation of such railway property by the States, and prescribing a fixed limit for dividends.

Such legislation should not simply cover the interests of the shippers and the common carriers; it should embrace the interests of labor by providing for an insurance fund against accidents and old age and for conciliation of disputes between carriers and their employees. Such legislation should be simple, definite, certain; should cover every question relating to the regulation of interstate commerce, including the creation of the artificial beings called corporations that are to conduct it. It should frankly recognize the economic necessity of consolidation and combination and the essentially monopolistic character of the business, and regulate consolidation, combination, and monopoly with a proper regard for the interests of the public served by it, the property rights of the capital employed in it, and the human rights of the labor employed by it.

#### RAILROAD GROWTH AND CONSOLIDATION.

The railroad mileage has increased from 23 miles in 1830 to 213,000 miles in 1905. This mileage is owned by over 2,000 railroad corporations created by State laws. As the result of consolidation, combination, and recombination, the operation of these 2,000 railroads has been mainly unified under the control of less than ten systems, each organized under the laws of a single State, generally bearing the name of a 'single man, who is regarded as the dominant factor in its control.

The controllers of these systems resort for the machinery of combination to the States whose laws are most lax in proper restrictions regarding combination and overcapitalization.

#### CONTROL OF PRODUCTION.

In many cases the controlling corporation of a system, in addition to securing the control of a vast mileage through purchase or lease, also buys the stock of troublesome rivals, and thus gradually brings about a community of interests which results in the suppression of competition and the stability of rates. It also in some cases purchases the control of producing companies in coal and iron, and thus, in connection with other corporations bound to it by a community of interest, controls the production of coal and iron in such States as Pennsylvania and West Virginia.

In addition to this, the men who control the great industrial combinations have become the controlling spirits of the great railroad combinations, and thus monopoly in transportation and monopoly in production have become united in the realization of profit. The pending bill provides no remedy for this abuse.

#### CONTROL OF CAPITALIZATION.

As a rule, in the formation of these great railroad combinations there is no public supervision or control over the amount of their capitalization, this being left entirely to the judgment of those interested. States which require the approval by a public tribunal of stock and bond issues made for consolidation and combination, such as Massachusetts and Texas, are avoided in the creation of such combinations. The States whose legislation is most lax in such matters are resorted to for corporate powers. The capitalization of all the railroads engaged in interstate commerce is about thirteen billions of dollars, about half in bonds and half in stock.

The bonds for the most part represent genuine investment; the stocks, it is claimed, have been largely watered.

The President in his message has called attention to the evils of overcapitalization in the following words:

"Of these abuses perhaps the chief, although by no means the only one, is overcapitalization—generally itself the result of dishonest promotion—because of the myriad evils it brings in its train; for such capitalization often means an

inflation that invites business panic; it always conceals the true relation of the profit earned to the capital actually invested, and it creates a burden of interest payments which is a fertile cause of improper reduction in or limitation of wages; it damages the small investor, discourages thrift, and encourages gambling and speculation; while, perhaps, worst of all is the trickiness and dishonesty which it implies, for harm to morals is worse than any possible harm to material interests, and the debauchery of politics and business by great dishonest corporations is far worse than any actual material evil they do the public."

This measure does not reach this abuse:

#### CHANGES IN RAILROAD CONDITIONS SINCE 1887.

In the World's Work for October, 1905, appears an article by Prof. Ripley, of Harvard University, entitled as above.

In this article Prof. Ripley states that from 1889 to 1903 "while population and mileage increased one-third, the railroads in 1903 hauled the equivalent of two and a half times the total volume of freight traffic handled in 1889, the year of the earliest official statistics." He adds:

"If the freight business of the United States increased five times as fast as population or mileage in 14 years, the imagination runs riot concerning its probable magnitude 50 or 100 years hence."

In this article also appears the following statistical statement:

"Gross revenues of American railroads in 1889 were about \$1,000,000,000, and in 1903 they were about one billion nine hundred millions. The preliminary figures for 1904 show that they have practically doubled in the brief period of 15 years.

"The net income available for dividends has grown even faster. The increase to 1903 was, roughly speaking, about 250 per cent, namely, from one hundred millions in 1889 to three hundred and fifty-seven millions in 1903. There is every probability that by 1905 the net revenue will be more than fourfold the figures in 1889."

#### GROWTH OF CONSOLIDATION.

Prof. Ripley speaks of the enormous growth of consolidation since 1887 and calls attention to the fact that before 1890 a five thousand mile railroad was about the maximum, and that the next decade, 1900, witnessed the growth of systems of about twice that size. He then adds:

"Since then not simply consolidations but recombinations of systems, each in itself the result of antecedent consolidations, have made their appearance. The Morgan, Vanderbilt, Pennsylvania, Harriman, and Gould properties during the last five years attained lengths of 15,000 to 20,000 miles, and shall anyone be rash enough to predict that the end is yet in sight?"

In addition to this form of consolidation, Prof. Ripley says:

"Great systems are quietly assuming control of their lesser and parallel rivals through investment of surplus funds in their securities. In this way trunk-line territory has been practically closed to competition. The New York Central has secured the Lake Shore and through it purchased a large interest in the Philadelphia & Reading Railway. At the same time the Pennsylvania Co., through the Baltimore & Ohio, purchased control of its former troublesome rivals in the South, the Chesapeake & Ohio and the Norfolk & Western. The Baltimore & Ohio is also used by the Pennsylvania as a catspaw to assist in pulling the Philadelphia & Reading out of the fire of competition. The last company, thus jointly controlled at arm's length by the two great trunk lines, becomes the principal factor in the great anthracite coal combination, which includes four or five other companies. With the Vanderbilt and Morgan control of the Delaware, Lackawanna & Western and the Lehigh Valley it will be apparent how little room there is for competition in this territory. The only free lance in any sense is the Erie, and rumor has it that the New York Central, through the Lake Shore and the Pennsylvania, is buying into its control at the present time."

#### INTERCORPORATE OWNERSHIP.

Under this heading Prof. Ripley speaks of another form of consolidation which is going on. In 14 years, he says, outstanding stocks and bonds of railroads owned by the public increased only 25 per cent, while railroad ownership of such securities increased four times as fast, or 100 per cent.

"In other words," says Prof. Ripley, "railroad investments in other railroads have been growing about four times as fast as ownership by the general public, until in 1903 about one-fourth of the outstanding issues of railway stocks and bonds were owned by these corporations themselves."

This tendency has been accelerating during the past few years. Prof. Ripley cites as an illustration the case of the Union Pacific Railroad, whose holdings five years ago of miscellaneous securities were about eleven millions of dollars.

"In its annual report for 1904 this item is represented by \$211,800,000, mainly stocks of other roads with a few bonds. Including its holdings through auxiliary companies its investments have grown in five years from \$90,686,000 to \$342,587,000."

Prof. Ripley shows how suitable counterpoises of nonvoting stocks and bonds enable control of these parent companies to be held with comparative ease by a few men, and adds:

"This is our dilemma, then. Such an inverted financial pyramid, if it prove its worth, must unconscionably enrich the few who control it—the public danger of the overwealthy. If it threaten to prove top-heavy, it can be upheld only through larger exactions from the shipping and consuming public—extortionate rates; while, if it topple over, vast losses must come to the innocent public which provided nine-tenths of the real capital investment—witness widespread bankruptcy."

#### THE RISE IN RATES IN RECENT YEARS.

Prof. Ripley, after showing that during the period from 1887 to 1900 a great reduction was accomplished in the ton-mileage of the country and that it was the well-nigh universal opinion among traffic experts that these low freights had come to stay, states that the experience of the last five years has rudely shaken this belief, and that since 1900 freight rates have been sharply advanced, and that whilst opinions differ as to the exact degree and the relative justification of these increases no denial of the fact is made. He goes on to show that most of the import traffic for the current season is being carried on less than tariff rates, and that a vast amount of freight is also moved on special or commodity rates for the purpose of enabling some shipper, who otherwise might not be able profitably to reach a certain market, to engage in competition for the trade, and that it is the common opinion of railroad men that approximately three-fourths of all the tonnage of the railroads goes on such schedules.

Assuming, therefore, that the rates on this proportion of the tonnage is fixed by competitive conditions that can not be raised at will, Prof. Ripley argues that the burthen of making provision for additional revenue must fall upon the standard or high-grade freight, most of which is domestic and local. Accepting, therefore, the figures given by the carriers for the increase in ton-mile revenue of 5 per cent on all traffic and concentrating this entirely on one-fourth or one-fifth of the tonnage, Prof. Ripley argues we should have an increase to 20 or 25 per cent between 1900 and 1903. This, he shows, has been accomplished, not so much by raising rates as by a change in classification, and in yet other ways by the abolition of demurrage, by increase in charges for switching and terminal delivery, by increased fees for icing, refrigerator cars, or feeding or bedding stock, etc. He claims that great restlessness among the shipping public has been engendered by this increase of charges mainly because "they indicate indubitably" the utter impotence of the public when the carriers all agree to act in unison.

#### THE VAST POWER OF THE UNITED RAILWAYS.

Under this heading Prof. Ripley says:

"To-day the public, every merchant, and every community is confronted with the colossal power constituted of all the railroads acting in unison; this, too, in spite of antipooling and antitrust laws of the most stringent sort. It is the irresistible character and universal scope of these freight-rate changes which menace the future."

Prof. Ripley quotes from a decision of the United States circuit court for southern Georgia concerning the increase of freight rates on lumber as fully illustrating this point, in which the court says:

"After a careful consideration of the extensive record there seems to have been an utter absence of excuse or justification for the concerted action of the railroads which advanced the rates on lumber throughout the South. \* \* \* A highly significant feature of this case is the fact that the rates complained of

are the result of concert of action on the part of the members of the Southeastern Freight Association. \* \* \* In that territory, as regards every interest dependent upon the transportation of commodities, the action of the association is more authoritative than the firman of the Sultan or the ukase of the Czar. \* \* \* The marked increase of charges did not originate from a normal or reasonable exigency of the respondent's business. On the contrary, it was an arbitrary exaction imposed by a combination of railroad agents made in restraint of the natural movement of the produce in the lumber trade."

#### IS CONSOLIDATION DESIRABLE AND LEGAL?

It may be safely stated that consolidation has for the most part resulted in greater economy and efficiency of operation, in better and quicker service, in a more equal service, and in stability of rates. As to whether it has worked a reduction of rates is disputed. The verdict of the people would probably be in favor of controlled consolidation and against uncontrolled consolidation. None of these consolidations have been tested in the courts except that accomplished through the agency of the Northern Securities Co. It was condemned and dissolved. It is probable that others are equally illegal, but there seems to be little disposition to attempt to break them up. Consolidation and merger of railroads engaged in interstate commerce constitute a part of the economic development of such commerce.

This measure provides no supervision or control over consolidation or merger.

#### CORPORATE ACTIVITY IN POLITICS.

The activity of these great railroad combinations in politics has been increasing ever since 1896. They are in politics because they feel that their property may be at any time the subject of attack either by legislatures or by administrative officers. Their vast property is between the upper and the nether millstone—the upper millstone of the rate-regulating power, the nether millstone of the taxing power. Between the two, save for the protection of the courts, they could be ground to destruction.

Participation in politics is stimulated by the uncertainty and insecurity of their situation. In the States, as a rule, they take part in the selection and election of officials whose duty is likely to trench in any degree upon the taxing and rate-regulating power. In addition to being subject to the control of Congress as to interstate rates, they are subject to the control of 45 different State legislatures or commissions as to the rates of State commerce. They are also taxed under 45 different systems embraced in the laws of as many States.

There is no certainty, no uniformity, no permanency. Thousands of local officials are engaged in making the valuations and fixing the tax rates. The railroads are therefore in politics, and as they do everything systematically their participation in politics means either organization of or identification with a machine in most of the States of the Union, and since, as a matter of business, they pursue the lines of least resistance, this often means alliance with corrupt elements of the communities in which they operate. Having been drawn into politics by the necessity for protection, they are likely to become aggressive and dominant in political control. It is expensive business for the railroads and it is a grave menace to the institutions of the Republic.

This measure fixes no certain rules or principles for the ascertainment of either rates or taxes. It increases the uncertainty of the railroads; it will enlarge the area of their political activity.

#### UNDOUBTED POWERS OF THE NATIONAL GOVERNMENT.

No one can question the power of the National Government to create corporations for the purpose of carrying out the powers entrusted to it by the Constitution. Under the granted powers of the Constitution we have created national banks we have acquired and are now completing the Panama Canal, and have acquired the stock of and are operating the Panama Railroad. Under these powers we have also incorporated several railroads, among others the Union Pacific, the Atlantic Pacific, and the Texas Pacific railroads, the two former constructed through Territories, the latter constructed from a point in Texas to a point in California, all done under the powers granted in the Constitution to provide for the national defense, to establish post offices and post roads, and to regulate commerce with foreign nations and among the States.

Economic efficiency requires that the same railroad should accommodate both State and interstate commerce. State commerce is subject to the regulation of the State, interstate commerce is subject to the regulation of the United States. There should be no difficulty concerning the harmonious cooperation of the greater and the lesser sovereignties under a national incorporation act.

When I first introduced a joint resolution for the creation of a commission to frame a national incorporation act for railroads, I presented the view that it was unnecessary to seek either the cooperation or the consent of the States; that the United States had the power to create corporations for the transportation of interstate traffic; that it had the power to exempt the instrumentalities it chose for this purpose from all State burthens, either as to taxation or as to regulation of rates, upon the theory that the States could not put burthens upon national instrumentalities which might destroy their efficiency. But upon reflection I am convinced that it is wiser to secure the cooperation of the two sovereignties. I would suggest, therefore, the following legislation:

#### WHAT NATIONAL INCORPORATION SHOULD INCLUDE.

It is clear to my mind that we should have a national law for the incorporation of railways engaged in interstate commerce; that no corporation formed under it should be permitted to enter upon its work until its certificate of incorporation defining its purpose and powers should be submitted to and approved by the Interstate Commerce Commission; that such corporation should not be permitted to commence construction or to purchase or acquire existing railroads until its plans and estimates are approved by the Interstate Commerce Commission; that such corporation should not be permitted to issue its bonds or stock until the amount thereof and the consideration therefor are submitted to and approved by the Interstate Commerce Commission, after a public hearing; that all subsequent issues of stock and bonds should require a similar hearing and approval; that no existing railroad now owned by a corporation created by the laws of any State should be acquired or purchased without the consent of such State; that railroads so constructed and acquired by such national corporation should be subject to the reasonable police laws of the States in which they are operated; that the stock and bonds of such national corporations should be exempt from all taxation, but that the actual property and equipment of such corporations should be assessed by the States in which they are located at such percentage of its value as is customary and general, and should be taxed at the same rate as other property, or, better, that the State should levy a tax not exceeding 4 per cent upon such proportion of the gross receipts of the railroad as the mileage of such railroad within the State bears to the entire mileage operated; that nothing in the act should interfere with the power of the State to regulate the rates for the State traffic upon such railroad; that the Interstate Commerce Commission should make a valuation both of the road constructed and the road and equipment purchased or acquired and should make a record of the same, and that the issue of bonds and stock should equal such value and no more, and that all subsequent issues of stock and bonds should represent the actual value of property constructed or acquired; that such corporation should be authorized to collect rates which would yield gross receipts, which, after paying the expenses of operation, the cost of maintenance, the taxes, the interest on debt and other fixed charges should be sufficient to pay a dividend of 5 per cent per annum.

#### APPROVAL OF STOCK AND BOND ISSUES.

A national incorporation act should limit stock and bond issues to the cash paid in, or to the value of the property acquired, and so strict should this provision be that no issue of stock or bonds should be permitted save with the approval of the Interstate Commerce Commission. There are two States in the Union to-day whose corporate legislation is of the highest character—the State of Massachusetts and the State of Texas. In both of these States the railroad commission must approve the issues of stocks and bonds, and in Texas no stock or bond issue is legal unless the approval is indorsed upon the stocks or bonds.

What we wish to do is to nationalize either the system of Texas or the system of Massachusetts, and to denationalize the system of New Jersey. It is possible that we may have to use powers both of persuasion and of coercion in bringing in existing corporations under a national charter. It may be that we

will have to validate a large portion of the capitalization already created, but if we can save the country from the overcapitalization of the future, even though we validate a large part of the overcapitalization of the past, we will confer a lasting benefit upon the American people.

#### A FAIR RETURN.

The return which national corporations are to have upon their capital should be a fair rate of interest on a fair valuation, and in giving the franchises to collect tolls we should provide that it should be exercised in such a way as to guard the public interest and save the public from extortion. The Supreme Court has declared that the railroads are public highways; that the right to collect tolls can not be exercised without a grant from the sovereign; that the tolls must be reasonable, and that in a judicial inquiry the reasonableness of the toll must be determined by a consideration of the value of the property employed in the public use, the gross receipts, the operating expenses, the cost of maintenance, the taxes, the interest on debts, etc., and that rates should be so adjusted as to yield, after all reasonable allowances, a fair return upon such valuation.

The best way of maintaining for all time the valuation of these roads is to have the capital stock express the real capital employed, and not a fictitious capital, and then we will know upon what amount a fair return should be paid. My own belief is that the return should be 5 per cent per annum with an allowance to the company for dividends of one-third of all profits that may be realized above 5 per cent, the remaining surplus profits to go toward a guarantee fund for dividends and an insurance or pension fund for employees. This would mean automatic regulation in time so that the Interstate Commerce Commission would have almost nothing to do, for automatically as the business of the country increases the limitation on dividends would force the betterment of the railroads and the reduction of rates.

In *Smyth v. Ames* (169 U. S., 546), the Supreme Court says:

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under the particular rates prescribed by statute, and the sum required to meet operating expenses are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

And yet, although the Supreme Court has laid down the rule for the regulation of rates, as involving a fair return upon the value of the property affected, in the consideration of which certain factors are to be considered, such as the stock and bond issues, the actual cost, the actual cost of reproduction, etc., we in our legislation do not provide the factors by which the Interstate Commerce Commission can be guided. We should furnish them with the means of controlling the capitalization of these corporations, and if we do not enter upon a national incorporation of railways we should at all events provide that the Interstate Commerce Commission should enter upon a valuation of the railroads, and to that valuation should be added from time to time the increases of bond and stock issues made by the corporation with the approval of the commission.

#### THE GOVERNMENT SHOULD DETERMINE WHAT SHALL BE A FAIR RETURN ON CAPITAL.

But there is another thing we can determine. We can determine the return upon capital. This is no innovation. It has existed throughout the history of this country. When we organized the Union Pacific Railroad we provided that the rates should be diminished after the income reached 10 per cent. In Massachusetts to-day the limitation upon the return on capital in electric railroads, which are being built all over the State, is 6 per cent, with an allowance of

one half of the additional profits to the corporation and the other half to be paid to the State.

The result is that nothing has ever been paid to the State. The corporation itself has never received the other half of the profits in the shape of dividends, but all excesses over 6 per cent have gone to the betterment and extension of roads and toward reasonable reductions of rates. The advantage of a limitation upon the dividend return on capital is that it works automatically either toward the betterment of the road, the reduction in rate, or to an increase of wages, all of which are to the interest of the country. Otherwise an increase of business tends simply to the increase of profit to the stockholder.

This system, while securing to him a fair return upon his investment, gives the balance of the profit, caused by an increase of population and an increase of business, to the public in the shape of the betterment of the road, in the shape of increased wages to employees, in the shape of reduced rates. If we enter upon a system of proper capitalization of these roads, involving a fair and fixed return in the shape of dividends, the Interstate Commerce Commission will hardly ever have cause to act, and automatically the entire administration of these roads will tend toward impartiality in place of partiality, to reasonable rates instead of unreasonable rates, to the betterment of roads instead of exhausting the roads with a view to paying dividends on watered capital.

#### AUTOMATIC ADJUSTMENT.

Thus we would have an automatic kind of adjustment under national control, which would do away not only with excessive rates but all the abuses arising from preferences and discriminations as to individuals or localities. The tendency would be to equality and reasonableness of service.

#### TAXATION.

Then there is the question of a uniform system of taxation to be devised. Whenever the National Government creates a corporation for the carrying out of a great public purpose, and when the National Government uses the property of that corporation as an instrumentality for carrying out the powers conferred by the Constitution, it can, if it chooses, absolutely exempt such property from State burdens, for the power to tax involves the power to destroy. If it can do this, it can certainly do what I contend for, namely, lay down the rule by which States shall tax the property of such corporations within their boundaries.

We all know the looseness of the State laws regarding the taxation of railroads. We know that the range of assessment is a wide one; that the lesser degree of assessment is simply a valuation of the tracks and of the right of way, and that the higher degree of assessment involves the combined value of the stock and bonds. In addition to this, the stock and bonds themselves in the hands of the stockholders can be assessed in most of the States, and thus we have a double system of taxation. As long as the taxation of railroads is subject to the conflicting laws of 45 different States is it to be wondered that railroads keep in politics? Can we throw ten billion dollars' worth of property into the political arena, subject to public control, both as to rates and to taxes, and then ask the ten billion dollars to keep out of politics?

The United States Government should fix a rational and fair rule for the taxation of railroad properties which would leave nothing to discretion and which could be ascertained with mathematical certainty. Such a tax is a percentage tax upon gross receipts levied by the various States in proportion to mileage. It has the advantage of mathematical certainty and would relieve railroads of all necessity, so far as taxation is concerned, of interfering in politics.

Besides this, if the Interstate Commerce Commission is to fix the rates it is absolutely essential it should have all the factors for determining what is a fair return upon the capital invested, and one of those features is the allowance of the taxes; and if these taxes can be rudely disturbed from time to time by political action, involving violent readjustments, there can be no certainty either in the action which they take or in the rates for transportation which are the result of their action. Such legislation would be part of a rational adjustment of regulation, for it would involve not an absolute surrender to an Interstate Commerce Commission of the legislative powers belonging to Congress, but would involve the fixing of a rule working mathematically toward certain re-

sults and leaving the Interstate Commerce Commission the discretion and the judgment to work out the results according to the rule.

The difficulty with most of the propositions suggested for the fixing of rates by the Interstate Commerce Commission is that they confer upon an administrative tribunal all the legislative powers conferred by the Constitution upon Congress in this matter, and it may be a serious question in the future as to whether the Congress can turn over all this power. It is claimed, of course, that Congress fixes the standard in declaring that all rates must be just and reasonable, and intrusts to the commission the duty only of adjusting the rates to the standard, but it must be remembered that the only power which Congress has over rates is to fix just and reasonable rates, and that in turning this power over to an administrative commission it delegates all the power it has. It may be a serious question as to whether Congress can go so far. A provision that the commission should value the property and should allow such rates as, after the allowance of operating expenses, interest on debt, fixed charges, etc., should yield a certain percentage on such value, would be sure to stand the test of the courts.

#### RAILROAD EMPLOYEES.

There are other provisions which a national incorporation act should contain. One is an insurance and pension fund for employees. One per cent of the gross receipts of all the railroads of the country, amounting at present to over \$2,000,000,000 annually, would be \$20,000,000 annually. This sum put into an insurance and pension fund and invested under the direction of the Secretary of the Treasury would yield ample returns for the relief of employees suffering from injury or old age. The charge should be frankly imposed on the public as one of the fixed charges of operation, and allowance should be made therefor in fixing rates.

The Interstate Commerce Commission should be made a board of conciliation as to all disputes between employees and the railroads. As it is, whenever there is a dispute between a railroad company and its employees, if they fail to agree, there is war—war which does not involve them only but which involves the entire country, threatening an impairment and even destruction of the commerce between the States and between communities. Can it be said that it is wise to adhere to a system which threatens at any time to paralyze trade and to lock up the activities of the entire country? I would not provide compulsory arbitration, but I believe that the conciliation of the Interstate Commerce Commission would be as effective in such matters as has been the conciliation of the railroad commission of Massachusetts in disputes between railroads and shippers.

#### THE NATION SHOULD ACT.

These are the questions which come before us in the consideration of national incorporation. We are considering questions of the general welfare, of the national defense, of the National Postal Service, of the national commerce, and of foreign commerce—all of them intrusted by the Constitution to the representatives of the people of the United States in Congress assembled. We have not exerted these powers to the full. Is it time that in the interests of the entire country we should assume the functions plainly given to us by the Constitution and provide with deliberation and judgment for their full exercise?

#### GOVERNMENT OWNERSHIP.

It is plain that the people are restive under existing conditions. They realize that consolidation, capitalization, and return on capital are practically uncontrolled; that a few men in the great financial centers have almost absolute power in these matters; that our dual system of government tends to a confusion in control which practically exempts them from all control; that the complexity of the situation makes the railroad men the dominant power in politics; that the confusion of bond and stock issues, of stock watering, of leases, mergers, and combinations absolutely paralyzes the judgment of the average right-thinking man and is a fruitful source of corruption and fraud, political and financial.

They realize that the men who are prominent in the great industrial corporations are getting control over the transportation of the country, and that the

union of control of the finances, the production, and the transportation of the country in the hands of a few has already created a plutocracy unsurpassed in wealth and power in the world's history, and that if this continues we are upon the threshold of still greater concentration of wealth and power.

They will look for simplicity in whatever plan of relief is proposed, and unless we unify and simplify the control of transportation in a few thoroughly controlled great national corporations whose finances and operations can be easily understood and whose functions will be entirely taken out of politics, they will drift to national ownership as the easiest solution.

The argument is a simple and taking one. If outside of the United States three-fifths of the trackage of the world is in national ownership, why should not America own her railroads? If the universal tendency is to the ownership by nations, why should not we follow their example? If the Nation can build the most gigantic public work of modern times, the Panama Canal, and if it can own and operate a from ocean-to-ocean railroad at Panama, why can it not build and own and operate lines through the United States from ocean to ocean and from the Lakes to the Gulf? If Chicago can contemplate the ownership of interurban railroads costing hundreds of millions, can not the Nation take in hand the ownership of interstate railroads costing billions? Such in brief is the argument in favor of national ownership. The method is not difficult.

It would be easy to authorize the Interstate Commerce Commission to institute suit to condemn the shares of stock in all the railroads in the country engaged in interstate commerce, leaving the bonds outstanding as a lien upon the property. Thus the interests of the stockholders would be purchased by the Nation, and the Interstate Commerce Commission could step into the position of directors of the various companies with their present organizations of officials and employees and could gradually work out a method of national administration. The present bond issues amount to about \$6,000,000,000, bearing interest at about 4½ per cent, for which Government bonds at 2½ or 3 per cent could be gradually substituted as the railroad bonds matured, thus accomplishing a saving of \$90,000,000 to \$120,000,000 annually. The capital stock, whose par value aggregates about \$6,000,000,000, and whose market value aggregates a little less, could be condemned at approximately the market rates and paid for by the sale of 2½ or 3 per cent United States bonds.

As the present annual revenue of all the railroads is over \$2,000,000,000 it would furnish a sufficient sum to pay all the fixed charges of the companies and the low rate of interest upon the Government bonds issued for the purchase of stock and produce a surplus which would make ample provision for betterments and extensions, and also provide a sinking fund which would extinguish the entire debt in fifty years. There can be no doubt about the legality of such a procedure. A similar bill was passed unanimously in the Senate at the last session, authorizing the condemnation of the stock of the Panama Railroad. By this method the Government would acquire without any revolutionary methods the control of all the railroads engaged in interstate commerce in the country, and assuming that the administration was honest and efficient the saving effected by the substitution of low-rate bonds for high-rate stock and the gradual retirement of existing bonds at much lower rates of interest would eventually pay for the roads.

Should the country determine to simply take hold of the railroad construction of the future, leaving the existing railroads in the hands of their present owners, the Government could easily build a railroad of 3,000 miles across the continent from Norfolk or Charleston to Los Angeles or San Diego, which would become the spinal column of a great governmental system. Government ownership presents no difficulties, either constitutional or practical, except possibly the difficulty of honest and efficient administration, and the country will certainly drift to it unless the existing abuses of uncontrolled monopoly, of overcapitalization, of accomplished union between the producing and transportation interests, of political control, and of unjust preferences and discriminations are done away with. Even assuming that the Government management may not be as economical, the time may yet come when the people will regard equality of service as of more importance than economy of service. Such briefly is the argument for national ownership.

But I believe the policy I am advocating would give the country all the benefits of Government ownership with none of its dangers. It would abolish the evils which have arisen from unrestricted monopoly, automatically bring about a reduction in rates, put the railroads out of politics, close the door against the entrance of over a million men into the political patronage, and retain the

management of the able men whose genius created our present efficient system of transportation out of the crude conditions which prevailed a generation ago.

FRANCIS G. NEWLANDS.

I append hereto a bill which I have introduced creating a commission to consider and recommend legislation relating to the national incorporation of common carriers engaged in commerce between the States. I trust that the provisions of this bill may be added to the pending bill in order that a full report upon this important question may be presented at the next session. I also present for consideration certain sections of a proposed national incorporation act upon which I have been engaged. It is unnecessary to include the purely formal parts of such an act relating to organization, by-laws, etc. These provisions are merely suggestive and are intended as a practical exemplification of my argument. They are presented simply in a tentative way, and I do not pretend to have come to any final conclusion regarding them. As I have not attempted in this report to review the authorities upon the legal questions here presented, I append a statement on this subject made by me before the Senate Committee on Interstate Commerce at its recent hearings.

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#### APPENDIX A.

[S. 4471, Fifty-ninth Congress, first session.]

Mr. Newlands introduced the following bill:

**A BILL** Creating a commission to consider and recommend legislation relating to the incorporation of common carriers engaged in commerce between the States and foreign countries, preventing the overcapitalization of such corporations, and promoting a uniform method of taxing the property and securities of such corporations, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That a commission is hereby created to be composed as follows: Five members of the Senate of the United States and five members of the House of Representatives of the United States, to be appointed by the presiding officer of each House of Congress, respectively: *Provided*, That not more than three of said members of the Senate and not more than three of said members of the House of Representatives shall be members of the same party.

Sec. 2. That it shall be the duty of this commission to investigate and report to the Congress on or before the first day of its next session what legislation, if any, is desirable for the incorporation or consolidation of common carriers engaged in commerce between the States or with foreign nations, and also what legislation, if any, is desirable for the prevention of overcapitalization by such carriers, and what legislation, if any, is desirable for the purpose of securing a just and uniform method of taxing the property and securities of such common carriers by the various States, and what legislation, if any, is desirable for the purpose of insuring the employees of such carriers against the risks incident to their employment, and what legislation, if any, is desirable for the purpose of securing the conciliation of disputes between such common carriers and their employees.

Sec. 3. That the commission shall give reasonable times for hearings, if deemed necessary, and if necessary it may appoint a subcommission or subcommissions of its own members to make any investigation in any part of the United States, and it shall be allowed actual necessary expenses for the same. It shall have the authority to send for the persons and papers and to administer oaths and affirmations. All necessary expenses, including clerks, stenographers, messengers, rent for place of meeting, and printing and stationery, shall be paid from any money in the Treasury not otherwise appropriated; however, not to exceed five thousand dollars for expenditure under this section, to be paid upon vouchers to be approved by the chairman of the commission.

Sec. 4. That any vacancies occurring in the commission, by reason of death, disability, or from any other cause, shall be filled by appointment by the officer and in the same manner as was the member whose retirement from the commission creates the vacancy.

## APPENDIX B.

[Hearings of Senate Committee on Interstate Commerce.]

TUESDAY, May 23, 1905.

The committee met pursuant to adjournment.

Present: Senators Elkins (chairman), Cullom, Kean, Dolliver, Clapp, and Newlands.

MAY 23, 1905.

## NATIONAL INCORPORATION OF INTERSTATE RAILROADS.

## ADDITIONAL STATEMENT OF SENATOR NEWLANDS.

[The first part of this statement will be found on page 776, Vol. II.]

Mr. CHAIRMAN: On April 17, 1905, after making my statement regarding my resolution for the national incorporation of the interstate railroads of the United States, Senator Foraker asked me certain questions relative to my proposed plan, which are to be found on pages 12 and 13 of these hearings, and suggested that I write out my answers and put them in the record. I avail myself of this privilege, and have the honor to submit the following:

\* \* \* \* \*

## MEANING OF "REGULATE."

In answer to the first question, I would say that the right to pass a national act for the incorporation of railroads engaged in interstate commerce does not depend entirely upon the interstate-commerce clause of the Constitution. It depends upon the power given to Congress under section 8. Article I, "to provide for the common defense and general welfare of the United States;" "to regulate commerce with foreign nations and among the several States," and "to establish post offices and post roads."

The word "regulate" in the Constitution has been given no narrow construction. The term "to regulate" does not mean simply to prescribe the rule. It has been held to sanction legislation absolutely prohibiting interstate commerce, as in the case of the lotteries. It has been held to apply to legislation facilitating or promoting interstate and foreign commerce. Under this power, among others, the Northern Pacific and other railroads were incorporated; under this power, among others, the Panama Canal is being built to-day, involving not only the construction of the canal, but the ownership and operation of a railroad and the conduct of the business of a common carrier.

So also the term "establish" in connection with post offices and post roads has been used in no narrow sense. It includes the leasing or construction and ownership of post offices. It includes not simply the establishing of post roads, but the construction, as in the case of the Cumberland Road. It includes the operation of post offices and post roads. It includes the actual carrying of the mails by Government employees. Instead of intrusting this work to agents, incorporated or otherwise, or instead of simply determining the rule by which post offices and post roads are to be conducted, Congress has not only established post offices, but given their establishment an entire monopoly of certain kinds of business, even punishing as a crime any participation in them by virtue of State authority or otherwise. Under these powers the National Government could undoubtedly construct a railroad. If it could construct a railroad it could operate it, and if it should not choose to do either it could select an agent for the purpose of constructing and operating it. It can select any instrumentality for the exercise of the broad powers employed in the control of the postal service, interstate commerce, and the military defense. Being sovereign in the exercise of these powers, it acts upon every foot of American soil, regardless of State lines and unimpeded and unobstructed by State legislation. It can select any agents it chooses for carrying out such powers. It can select as such agents individuals, or can itself create corporations for the purpose of carrying out those great governmental powers.

## TAXATION OF NATIONAL INSTRUMENTALITIES.

When the Government condemns for public use and constructs a post road, that moment the post road is free from State taxation. If the Government

buys real estate and builds a post office, that moment the real estate and building are exempt from State taxation. If the National Government should construct railroads for the purpose of carrying out these powers, such railroads would be exempt from State taxation, just as post offices and customhouses are, and just as post roads would be if built. If it intrusts such work to a corporation created by itself, the corporation is the agent for the purpose of carrying out governmental powers, and none of its powers or operations can be taxed by a State. If it selects certain property as the instrumentality or means through which its powers are to be exercised, so also would such property be exempt from State taxation, for just as the powers and the operations of the Government agent would be exempt from all local taxation, so also would be the property selected as the chosen instrument for the exercise of those powers. The powers and operations would be exempt without any express declaration to that effect by Congress. A different rule would probably apply to the property selected as the chosen instrument for the exercise of a national power. In that case it would be necessary to show unmistakably that the property was selected as the instrumentality, and that it was the purpose of Congress that it should be taken out of the domain of State taxation.

The proper organization of a system of transportation is just as essential to the welfare of the people as is the creation of a proper financial system. In the early history of the country it was determined to establish a United States bank to promote the fiscal operations of the Government. The State of Maryland sought to impose a tax upon the notes of a United States bank in Maryland. The notes were property just as a railroad is property, and yet the court held that the State of Maryland could not in the exercise of its taxing power tax those notes. It is true that in that case Chief Justice Marshall held that so far as the bank building was concerned the exemption would not apply, but he so held upon the ground that the ownership of the bank building was not essential to the operation of the bank; the bank could be conducted upon leased property, and therefore the bank building could not be regarded as a national instrumentality for the purpose of carrying out the powers conferred by the National Government upon the bank, but all property absolutely essential to the powers conferred upon the bank, such as promissory notes, bills of exchange, etc., were exempt from State taxation.

It should be noted that a railroad is a very different property from a bank building. The ownership of a bank building is not essential to the operation of a banking corporation. The ownership of a railroad is absolutely essential to the operation of a railroad corporation. If Congress therefore, under the interstate-commerce power, authorizes the construction of a railroad, it makes that railroad the instrumentality for the purpose of carrying out its powers—the means of the exercise of the power itself. The operation of the railroad can not be segregated from the right of way, the track, the station buildings, and the general equipment of the road. If they belonged to the Government they would be exempt from State taxation, and if the Government selects as its agent a corporation of its own creation and makes its property the instrumentality for the exercise of governmental powers, and unmistakably shows its intention that this instrumentality shall not be embarrassed by State taxation, clearly the property selected as the instrumentality must be as free from taxation as the powers themselves.

In this connection it is proper to say that my contention as to the right of the United States to exempt a railroad incorporated under a national law for interstate commerce from State taxation is not urged for the purpose of freeing such roads from sharing the burden of government, but simply for the purpose of securing uniformity and certainty, with a view to facilitating the public regulation of railroad corporations in which the fixed charge of taxes is an important consideration.

Under the rule laid down in *Van Allen v. The Assessors* (3 Wall., 573), it would be competent for the Congress of the United States to submit the property of national railroads engaged in interstate commerce to State taxation, first prescribing the rule by which such property should be taxed. In this way Congress could secure uniformity and certainty in the taxes, by laying down the rule which should be followed by the States, and could thus relieve the National Government of the duty of collecting and distributing the tax. This might be a better method than the one suggested by my resolution. It entirely relieves the United States from the position of a collector and distributor of taxes, and yet would accomplish the same purpose.

## THE AUTHORITIES.

In *Luxton v. North River Bridge Company* (153 U. S., 525) it was held that, under the power to regulate commerce among the States, Congress may create a corporation to build a bridge across navigable water between two States, and to take private land for that purpose, making just compensation. And Mr. Justice Gray, delivering the opinion of the court, said :

"The Congress of the United States, being empowered by the Constitution to regulate commerce among the several States, and pass all laws necessary and proper for carrying into execution any of the powers specifically conferred, may make use of any appropriate means for this end. As said by Chief Justice Marshall, 'The power of creating a corporation, though appertaining to sovereignty, is not, like the power of making war, or levying taxes, or of regulating commerce, a great substantive and independent power which can not be implied as incidental to other powers or used as a means of executing them. It is never the end for which other powers are exercised, but a means by which other objects are accomplished.' Congress, therefore, may create corporations as appropriate means of executing the powers of government, as, for instance a bank for the purpose of carrying on the fiscal operation of the United States, or a railroad corporation for the purpose of promoting commerce among the States. (*McCulloch v. Maryland*, 4 Wheat., 316, 411, 422; *Osborn v. Bank of U. S.*, 9 Wheat., 738, 861-873; *Pacific R. R. Removal Cases*, 115 U. S., 1, 18; *California v. Pacific R. R.*, 127 U. S., 1, 39.) Congress has likewise the power, exercised early in this country by successive acts in the case of the Cumberland or National Road from the Potomac across the Alleghenies to the Ohio, to authorize the construction of a public highway connecting several States. See *Indiana v. United States*, 148 U. S., 148. (153 U. S., 529)."

In *California v. Pacific Railroad* (127 U. S., 1) it was directly adjudged that Congress has authority, in the exercise of its power to regulate commerce among the several States, to authorize corporations to construct railroads across the States, as well as the Territories of the United States; and Mr. Justice Bradley, speaking for the court, and referring to the acts of Congress establishing corporations to build railroads across the continent, said :

"It can not at the present day be doubted that Congress, under the power to regulate commerce among the several States, as well as to provide for postal accommodations and military exigencies, had authority to pass these laws. The power to construct, or to authorize individuals or corporations to construct, national highways and bridges from State to State is essential to the complete control and regulation of interstate commerce. Without authority in Congress to establish and maintain such highways and bridges, it would be without authority to regulate one of the most important adjuncts of Congress. This power in former times was exerted to a very limited extent, the Cumberland, or National, Road being the most notable instance. Its exertion was but little called for, as commerce was mostly then conducted by water, and many of our statesmen entertained doubts as to the existence of the power to establish ways of communication by land. But since, in consequence of the expansion of the country, the multiplication of its products, and the inventions of railroads and locomotion by steam, land transportation has so vastly increased, a sounder consideration of the subject has prevailed and led to the conclusion that Congress has plenary power over the whole subject. Of course the authority of Congress over the Territories of the United States and its power to grant franchises exercisable therein are, and ever have been, undoubted. But the wider power was very freely exercised, and much to the general satisfaction, in the creation of the vast system of railroads connecting the East with the Pacific, traversing States as well as Territories, and employing the agency of the State as well as Federal corporations. (127 U. S., 39-40.)."

*McCulloch v. Maryland* (4 Wheat., 485).—This case decided that a stamp tax on the notes issued by a Federal bank was a tax on the operation of a Federal agency and therefore void. The essence of the decision is the impotency of the States to burden the operation of the Federal Government.

As to a tax on property as distinguished from operations, the court said, in conclusion :

"The States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government. \* \* \*

"This opinion \* \* \* does not extend to a tax paid by the real property of the bank in common with the other real property within the State, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the State."

*Osborne v. United States Bank* (9 Wheat., 737).—Practically a restatement of the preceding case on the points in issue. The court said, page 867, that a contractor could not be taxed for supplying a military post with provisions or for transporting provisions to troops in behalf of the Federal Government; but "it is true that the property of the contractor may be taxed as the property of other citizens, and so may the local property of the bank. But we do not admit that the act of purchasing or of conveying the articles purchased can be under State control."

This case continues the principle of the *McCulloch* case by laying emphasis on the operations of the Government and the impotency of the States to interfere therewith.

*Thompson v. Pacific Railroad* (9 Wall., 579).—This was a case of taxation by a State of a railroad acting under a Federal charter as well as a State charter. The court said (p. 590):

"We do not think ourselves warranted, therefore, in extending the exemption established by the case of *McCulloch v. Maryland* beyond its terms. We can not apply it to the case of a corporation *deriving its existence from State law, exercising its franchise under State law, and holding its property within State jurisdiction and under State protection.*"

In this case the court considered the possibility of what would happen if Congress should do what it had not done, to wit, explicitly exempt its agent from taxation. The court said (p. 588):

"We do not doubt, however, that \* \* \* Congress may \* \* \* exempt, in its discretion, the agencies employed in such service from any State taxation which will really prevent or impede the performance of them."

"But can the right of this road to exemption from such taxation be maintained in the absence of any legislation by Congress to that effect?"

Throughout this case it will be noted that the court is careful to say that the case did not present the feature of any positive attempt on the part of Congress to exempt the property from State taxation, and the inference is clear that in such a case the exemption would have been operative and the State tax invalid.

This case emphasizes the difference between property and the operations of an agent of the Government, as follows (p. 591):

"We fully recognize the soundness of the doctrine that no State has a 'right to tax the means employed by the Government of the Union for the execution of its powers.' But we think there is a clear distinction between the means employed by the Government and the property of agents employed by the Government. Taxation of the agency is taxation of the means; taxation of the property of the agent is not *always, or generally*, taxation of the means."

"No one questions that the power to tax all property, business, and persons, within their respective limits, is original in the States and has never been surrendered. It can not be so used, indeed, as to defeat or hinder the operations of the National Government; but it will be safe to conclude, in general, in reference to persons and State corporations employed in Government service, that *when Congress has not interposed* to protect their property from State taxation, such taxation is not obnoxious to that objection."

Again obviously intimating a different opinion had Congress expressly established such exemption.

*Railway Company v. Peniston* (18 Wallace, 5).—This case arose out of the claim on the part of the State of Nebraska of the power to tax roadbed, depots, wood stations, water stations, and other realty, telegraph poles, telegraph wires, bridges, boats, papers, office furniture and fixtures, money and credits, movable property, engines, etc., of the Union Pacific Railroad Company.

The company was created by the act of Congress of July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Mississippi River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes." Various amendments were made to the original act at later sessions of Congress, but neither in the original act nor in any amendment was any provision made by Congress respecting the taxation of it or its property by the States through which the road might run.

The tax was resisted by the company on the ground that, having been incorporated by Congress—

"The State of Nebraska has no power to subject to taxation for State purposes the roadbed, rolling stock, and other property necessary for the use and operation of the road, such power resting exclusively in the Government of the United States."

It was distinctly stated by Mr. Chief Justice Strong, who delivered the opinion, that—

"The States may not levy taxes the direct effect of which shall be to hinder the exercise of any powers which belong to the National Government. The Constitution contemplates that none of those powers may be restrained by State legislation" (p. 30).

After referring to the legislation creating the Union Pacific road and advertising to the objects and purposes of that legislation, the justice further said (p. 32):

"Admitting, then, fully, as we do, that the company is an agent of the General Government, designed to be employed, and actually employed, in the legitimate service of the Government, both military and postal, does it *necessarily* follow that its property is exempt from State taxation?"

Emphasizing the difference between the operations of an agent and the property thereof, Justice Strong said (p. 33):

"It may therefore be considered as settled that no constitutional implications prohibit a State tax upon the property of an agent of the Government *merely* because it is the property of such an agent."

Then, after consideration of the various cases bearing upon the general question, Justice Strong summed up as follows (pp. 36-37):

"It is, therefore, manifest that exemption of Federal agencies from State taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the Government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such *necessary* effect. It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of Federal powers."

Eight justices heard this case, and the opinion of the court upholding the validity of the tax was concurred in by four of them. A fifth, Judge Swayne, concurred in the judgment, but said:

"I see no reason to doubt that it was the intention of Congress not to give the exemption claimed. The exercise of the power may be waived, but I hold that the road is a national instrumentality of such a character that Congress may interpose and protect it from State taxation whenever that body shall deem it proper to do so."

So that Judge Swayne would have decided against the majority of the court had there been exempting legislation. Two other justices flatly dissented, giving an opinion to the effect that such State taxation was invalid, even in the silence of Congress. And the eighth justice merely remarked: "I dissent from the opinion of the court."

So that all that can be claimed from this decision as to the power of Congress to exempt a corporation from taxation by affirmative legislation is that the court was evenly divided, and even this can not be fairly claimed, for the case of exempting legislation was not before the court, and the opinions of the four justices who upheld the tax do not contain a word which denies the power of Congress to exempt the property which it expressly declares to be its chosen instrumentality.

Mr. Justice Bradley, for himself and Mr. Justice Field, delivered a vigorous dissenting opinion, in the course of which he said (p. 47):

"The Union Pacific Railroad Company, therefore, being a United States corporation, created for national objects and purposes, and deriving its existence, its powers, its duties, its liabilities, from the United States alone; being responsible to the United States, now as formerly, for a whole congeries of duties and observances; being subjected to the forfeiture of its corporate franchises, powers, and property to the United States, and not to any individual State; being charged with important duties connected with the very functions of the Government, every consideration adduced in the cases of *McCulloch v. Maryland* and *Osborn v. The Bank* would seem to require that it should be exempt not

only from State taxation, but from State control and interference, except so far as relates to the preservation of the peace and the performance of its obligations and contracts. In reference to these and to the ordinary police regulations imposed for sanitary purposes and the preservation of good order, of course it is amenable to State and local laws.

"As an instrument of national commerce as well as Government operations, it has been regulated by Congress. Can it be further regulated by State legislation? Can the State alter its route, its gauge, its connections, its fares, its franchises, or any part of its charter? Can the State step in between it and the superior power or sovereignty to which it is responsible? Such an hypothesis, it seems to me, is inadmissible and repugnant to the necessary relations arising and existing in the case. Such an hypothesis would greatly derogate from and render almost useless and ineffective that *hitherto unexercised power* of Congress to regulate commerce by land among the several States. If it be declared in advance that no agency of such commerce, which Congress may hereafter establish, *can be freed from local impositions, taxation, and tolls*, the hopes of future free and unrestricted intercourse between all parts of this great country will be greatly discouraged and repressed."

Again:

"But it is contended that the laying of a tax on the roadbed of the company is nothing more than laying a tax on ordinary real estate, which was conceded might be done in the case of the United States Bank, in reference to its banking house or other lands taken for claims due in the course of its business. This is a plausible suggestion, but, in my apprehension, not a sound one. In ascertaining what is essential in every case, respect must always be had to the subject-matter. The State of Maryland undertook to tax the circulation of the United States branch bank established in that State by requiring stamps to be affixed thereto: the States of Ohio imposed a general tax of \$50,000 upon the branch established therein. These taxes were declared unconstitutional and void. They impeded the operations of the bank as a financial agent. Real estate was not a necessary appurtenant to the exercise of the functions of the bank. It might hire rooms for its office, or it might purchase or erect a building.

"But the primary object of a railroad company is commerce and transportation. In its case a railroad track is just as essential to its operations as the use of a currency or the issue or purchase of bills of exchange is to the operations of a bank. To tax the road is to tax the very instrumentality which Congress desired to establish, and to operate which it created the corporation.

"Besides, all that a railroad company possesses in reference to its roadbed is the right of way and the right to use that land for the purpose of way. This is a franchise conferred by the Government, and inseparably connected with the other franchises which enable it to perform the duties for the performance of which it was created. Any estate in the land—the soil, the underlying earth—beyond this belongs to the original proprietor, and that proprietor in the present case is the Government itself. So that, look at it what way we will, there is no room for the taxing power of the State. The estate in the soil can not be taxed, for that remains in the United States; the franchise of right of way and materials of track can not be taxed, because they are essentially connected with and form a part of the powers, faculties, and capital by which the national purposes of the organization are accomplished.

"If the roadbed may be taxed, it may be seized and sold for nonpayment of taxes—seized and sold in parts and parcels, separated by county or State lines—and thus the whole purpose of Congress in creating the corporation and establishing the line may be subverted and destroyed.

"In my judgment, the tax laid in this case was an unconstitutional interference with the instrumentalities created by the National Government in carrying out the objects and powers conferred upon it by the Constitution (pp. 49-50)."

Van Brocklin v. State of Tennessee (117 U. S., 151).—In this case Mr. Justice Gray, speaking for the court, said:

"The liability of the property of the Pacific Railroad companies to State taxation has been upheld on the distinction \* \* \* that, although the railroad corporations were agents of the United States, the property taxed was not the property of the United States, and a State might tax the property of the agents provided it did not tax the means employed by the National Government."

And he there quoted with approval the following from the dissenting opinion of Mr. Justice Bradley in the *Peniston* case:

"The States can not tax the powers, the operations of the property of the United States, nor the means which it employs to carry its powers into execution."

*California v. Central Pacific Railroad Company* (127 U. S., 1).—The question of taxation by the State of California of the franchise of the Central Pacific Railroad Company came before the Supreme Court in this case, and the court, speaking by Mr. Justice Bradley, unanimously held that such franchise was not subject to taxation by the State. In the opinion the following language is used:

"It seems very clear that the State of California can neither take them (the franchises held by the company) away, nor destroy nor abridge them, nor cripple them by onerous burdens. Can it tax them? It may undoubtedly tax outside visible property of the company situated within the State. That is a different thing. But may it tax the franchises which are the grant of the United States? In our judgment it can not. What is a franchise? \* \* \* Generalized and divested of the special form which it assumes under a monarchical government based on feudal traditions, a franchise is a right, privilege, or power of public concern, which ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration, either by the Government directly or by public agents, acting under such conditions and regulations as the Government may impose in the public interest and for the public security. Such rights and powers must exist under every form of society. They are always educed by the laws and customs of the community. Under our system their existence and disposal are under the control of the legislative department of the Government, and they can not be assumed or exercised without legislative authority. No private person can establish a public highway, or a public ferry, or a railroad, or charge tolls for the use of the same, without authority from the legislature, direct or derived. These are franchises. \* \* \* No persons can make themselves a body corporate and politic without legislative authority. Corporate capacity is a franchise. \* \* \*

"In view of this description of the nature of a franchise, how can it be possible that a franchise granted by Congress can be subject to taxation by a State without the consent of Congress? Taxation is a burden, and may be laid so heavily as to destroy the thing taxed, or render it valueless. As Chief Justice Marshall said in *McCulloch v. Maryland*, 'the power to tax involves the power to destroy.' Recollecting the fundamental principle that the Constitution, laws, and treaties of the United States are the supreme law of the land, it seems to us almost absurd to contend that a power given to a person or corporation by the United States may be subjected to taxation by a State. The power conferred emanates from, and is a portion of, the power of the government that confers it. To tax it is not only derogatory to the dignity, but subversive of the powers of the government and repugnant to its paramount sovereignty. \* \* \* It may be added that these views are not in conflict with the decisions of this court in *Thomson v. Pacific Railroad* (9 Wall., 579), and *Railroad Company v. Peniston* (18 Wall., 5). As explained in the opinion of the court in the latter case, the tax there was upon the property of the company and not upon its franchises or operations. (127 U. S., 40-41.)"

*Reagan v. Mercantile Trust Company* (154 U. S., 413).—While the language in this case is not wholly clear, it seems to indicate a belief that Congress might exempt such a railroad from State taxation. Page 416:

"Similarly we think it may be said that, conceding to Congress the power to remove the corporation in all its operations from the control of the State, there is in the act creating this company nothing which indicates an intent on the part of Congress to so remove it. \* \* \* It (Congress) must have known that, in the nature of things, the control of that business would be exercised by the State, and if it deemed that the interests of the Nation and the discharge of the duties required on behalf of the Nation from this corporation demanded exemption in all things from State control it would unquestionably have expressed such intention in language whose meaning would be clear. Its silence in this respect is satisfactory assurance that, in so far as this corporation should engage in business wholly within the State, it intended that it should be subjected to the ordinary control exercised by the State over such business."

Central Pacific Railroad Company v. California (162 U. S., 125):

"It may be regarded as firmly settled that although corporations may be agents of the United States their property is not the property of the United States, but the property of the agents, and that a State may tax the property of the agents, subject to the limitations pointed out in Railroad Company v. Peniston, etc.

*"Of course, if Congress should think it necessary for the protection of the United States to declare such property exempted, that would present a different question."*

Van Allen v. The Assessors (3 Wall., 70 U. S., p. 573).—The court in this case considered the act of June 3, 1864, "To provide a national currency," etc., which subjected the shares of the bank associations in the hands of shareholders to taxation by the States, under certain limitations. It also considered the act of March 9, 1865, of the Legislature of New York, which taxed such shares but did not tax them by the same rule as the shares of State banks, and held this statute unwarranted by the act of Congress and void. The court said (p. 591):

"That Congress may constitutionally organize or constitute agencies for carrying into effect the national powers granted by the Constitution; that those agencies may be organized by the voluntary association of individuals, sanctioned by Congress; that Congress may give to such agencies so organized corporate unity, permanence, and efficiency; and that such agencies in their *being, capital, franchises, and operations* are not subject to the taxing power of the States, have ever been regarded since those decisions as settled doctrines of this court."

It will be perceived in this case that Congress laid down the rule under which a State tax could be levied upon the capital invested in a national corporation, and as the rule laid down by Congress was violated by the State, the tax of the State was held to be invalid.

From the foregoing authorities it seems abundantly clear—

First. That Congress, under the power to regulate interstate commerce, can create corporations for the purpose of engaging in such commerce.

Second. That a State can not tax the franchises of such corporations, nor can it interfere with the operations of a corporation chartered by the United States for such purposes, or hinder, impede, or burden such corporation in carrying out such purposes.

Third. That while the State may tax the tangible property of the corporation within its territorial limits, in the absence of any restriction upon the taxing power of the State contained in the charter of the corporation, nevertheless Congress may in terms expressly provide against such State taxation by a declaration that all the property of the corporation necessary for the carrying out of the purposes for which it was incorporated shall not be subject to State taxation, or it can prescribe the rule for State taxation. In other words, Congress itself can declare what shall be regarded as the instrumentalities of government, can define such instrumentalities in the charter itself, and upon such instrumentalities the States can not levy any tax if Congress forbids.

#### NATIONAL INCORPORATION OF EXISTING RAILROADS.

In his second question Senator Foraker inquires whether we could compel the roads already in existence to incorporate under an act of Congress, and if they were willing to, do so, could they get rid of their outstanding stocks and bonds?

In reply I would say that I am uncertain as to whether we should take measures to compel existing roads to incorporate under a national act. I would prefer to so shape a wise, fair, and comprehensive law, simplifying their operations and relieving them of many existing embarrassments, which tend to the injury of the public as well as of the roads themselves, as to induce them to accept its provisions.

Of course, we could not compel those roads to accept a national charter, but we could by law prevent them from engaging in interstate commerce unless they accepted a national charter. As three-fourths of the business of the roads is interstate, it is clear that self-interest would compel the roads under such conditions to accept a national charter.

But I do not think any compulsory process is necessary. The railroads themselves must be desirous of getting rid of the present complexity. It is amazing how they have been able to develop their groups or systems under the machinery

now afforded by the law. We have the anomaly of the lesser sovereignty creating the agency which is to do the greater sovereignty's business; the lesser sovereignty, the State, can create a corporation for the purpose of constructing a railroad in that State. Such a railroad is a foreign corporation in all other States and can operate in such States only by their comity. Thus the Baltimore and Ohio Railroad is incorporated under the laws of Maryland. As to that State it is a domestic corporation, but as to the 10 or 12 other States in which it operates it is a foreign corporation.

The Baltimore and Ohio Railroad Company has been obliged to incorporate a great number of subsidiary companies in other States of which it owns the stock. All this tends to complexity, both as to the finances, taxation, and regulation either by a State or National Government. Similar conditions exist in the case of the Pennsylvania Company and the New York Central Railroad Company. The Rock Island system is consolidated under a holding company organized under the laws of New Jersey, in which there is not a single foot of Rock Island track. I take it for granted that if in a given State a railroad is to be operated by a foreign corporation it would prefer that that corporation should be the creation of the National Government, in which it has a share, rather than the creation of a foreign State government in which it has no share.

Undoubtedly, had it been foreseen that the railroad systems of the country would assume their present enormous proportions and that interstate commerce would be the dominant factor in the business of each railroad, involving the practical obliteration of State lines, so far as the railroad business was concerned, national machinery would have been established for the purpose of creating such agencies of interstate commerce. But railroading has been an evolution. Railroads in the first instance were short roads entirely within the boundaries of a single State. As no national legislation was given, they have been compelled to work out their system through the States by the creation of State corporations, which were domestic corporations in the States which created them and which were foreign corporations in all other States in which they operated. The result is that in many cases the laws have been too lax and in other cases too restricted, and it is amazing that under these difficulties the railroad operators could have worked out so splendid a system. The evolution of railroads has been accomplished under the greatest difficulty. It is a question as to whether many of the practical consolidations now existing would stand the legal test.

All such embarrassments and uncertainties tend to make railroad financing and railroad operation difficult. It seems to me we should frankly recognize the evolution of railroading by a national law, and that we should do everything that is possible to simplify the operation of taxation and the regulation of railroads, and this can only be done under a charter given by a sovereign whose dominion within the powers conferred by the Constitution, of which interstate commerce is one, rests upon every foot of American soil regardless of State lines, and that the legislation regarding it should be the legislation of the whole Nation, and not the complex, varying, and contradictory legislation of the various parts.

Senator Foraker also inquires as to how the existing railroads, in case they accepted national charters, could get rid of their outstanding stocks and bonds.

As to the bonds, the answer is simple. Each railway system, would organize a national corporation under a national law, and would transfer all its property to such corporations subject to the existing bonded indebtedness. As the existing bonds matured they would be retired by an issue of the bonds of the new company, and thus in the end the bonds of the new national corporation would be substituted for the bonds of the constituent State corporations. As to the stock, the process would be no more difficult than that frequently gone through with in existing consolidations of State corporations. The stock of the old companies would be surrendered and the stock of the new company substituted. Of course, the stock issue of the new company must be subject to the approval of some tribunal, such as the Interstate Commerce Commission, in order to avoid overcapitalization. But I take it that a fair method of valuation of the stock of the existing road could be secured. Individually I should favor a very liberal adjustment.

I should recognize the market value of existing stocks, whether watered or not. The watering of stock in the past has had many causes, among them the difficulty of promoting such enterprises without giving investors some speculative chance. The railroads have been obliged to work out their own salvation

unaided by wise laws, and while possibly some of these exaggerated stock issues have been the creation simply of stock speculators many of them have been necessitated by financial exigencies. At all events, the stocks are now in the hands of the investing public and have largely gone out of the hands of those who originally issued them. If we can only guard the stock and bond issues of the future and prevent overcapitalization—all of which is provided for by my proposition—we can easily afford to validate much of the overcapitalization of the past.

The amount of stock which should be issued in new national corporations to the old constituent companies could be determined in two ways. One would be by providing a special charter for each of the eight or ten existing systems. Congress, in that event, could determine in each case by the statute itself what should be the issue of the new corporation. A better method, however, would be to shape a general law and leave the approval of the stock and bond issues to some tribunal such as the Interstate Commerce Commission.

#### STATE COMMERCE.

Senator Foraker's third question is as to how we would deal with transportation originating and ending in a State, but which is conducted by those interstate lines.

I do not see how there is any difficulty in this. Surely an interstate railroad can engage in State business if a State railroad can engage in interstate business; and if, as is the rule, the interstate business is three-fourths of the business of every railroad in the country, it would seem proper that the railroad conducting such business should be an interstate road rather than a State road. It is true that I would prefer that there should not be two systems of regulation of rates. If we accomplish the consolidation of these great systems of railroads through a national charter, we will, of course, so regulate the business of such corporations as to prevent extortion, preference, and discrimination. The regulation of the greater will necessarily include the regulation of the less, and it only produces complexity when we have the legislatures, the railway commissions, and the taxing powers of forty-five States all operating at the same time upon these national highways. It would be much better for them and much better for the public if, instead of being under the control of forty-six sovereigns, namely, forty-five States and the Nation, they were under but one national control. It will be easy, however, to take the sentiment of the States as represented in Congress upon this subject. If they desire to reserve the control and regulation of State commerce, and also the police powers, there is no reason why it should not be so provided in the act.

My proposition does not involve the taking away from the State of the power of regulating State commerce. It can exercise that power over corporations organized by the State and doing business in it. It can exercise that power with reference to corporations organized under a national incorporation act unless there is a declaration in the incorporation act that the power shall not be exercised so far as the Government instrumentality is concerned. Such a declaration would leave the power still existing, but would simply assert that the power should not be exercised as to the instrumentality created by the National Government.

The power of Congress to exempt national roads from State regulation would rest upon the same principle as the power to exempt them from State taxation, viz, that the power to regulate, like the power to tax, is the power to destroy. It is not quite so clear, however, as the power to regulate would only apply to a small part of the business of an interstate road, viz, the commerce beginning and ending in a State; and the destructive effect of this could not be great.

#### THE FEDERAL COURTS.

Another objection urged to national incorporation is that all national railroad corporations would have the right to carry their cases into the United States court. The answer to this is that the right to carry the case into the United States court would depend upon the cause of action and not upon the national character of the corporation. If the case was one arising under the law or the Constitution of the United States, the corporation would have the right to carry such case into the Federal courts, whether it was a national or a State corporation.

This could be made certain by the statute itself, as in the case of the national banks; for under the law regarding the incorporation of national banks, act of July 12, 1882 (22 Stat., 162, sec. 4), it is expressly provided that the jurisdiction for suits hereafter brought by or against any association established under any law providing for national-bank associations, except suits between them and the United States or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States which do, or might do, banking business, when such suits may be begun, and all laws and parts of laws of the United States inconsistent with this provision be, and the same hereby are, repealed.

In the case of the *Leather Manufacturers' Bank v. Cooper* (120 U. S., p. 778), the court, in considering the above section of the act of 1882, said:

"This was evidently intended to put national banks on the same footing as the banks of the State where they were located for all the purposes of the jurisdiction of the courts of the United States."

But it will thus be seen that under the national statute incorporating railroads the railroads can be prevented from claiming their Federal origin as a reason for invoking the jurisdiction of the United States courts, and thus the objection to the inconvenience of compelling all persons in litigation with national railroad companies to go into the Federal courts would be obliterated.

#### APPENDIX C.

#### SUGGESTIONS AS TO LEADING PROVISIONS OF A NATIONAL INCORPORATION ACT FOR RAILROADS.

##### FORMATION.

SECTION 1. Any number of persons not less than fifteen may, under this act, form a corporation for the purpose of constructing, maintaining, and operating an interstate railroad, or for the purpose of acquiring and operating a railroad or railroads, already constructed and engaged in interstate commerce.

\* \* \* \* \*

##### CAPITALIZATION.

SEC. 3. Such corporation shall issue only such amount of bonds and stock as may be necessary for the construction, purchase, and equipment of the railroads constructed or acquired. No bonds or stock shall be issued except for money paid or for property acquired at its actual value. The amount of such issue of stock or bonds shall in every case require the approval of the Interstate Commerce Commission, which shall grant public hearing regarding the same, to which all parties interested shall by public notice given by the commission be invited. The United States shall be represented at such hearing by the Attorney General or one of his assistants. The commission shall certify in writing to the incorporators or to the corporation its determination, and shall record the same in its records, and all bonds and stock not issued in compliance with such determination shall be void as against such corporation.

\* \* \* \* \*

##### REPORTS.

SEC. 14. All corporations formed under this act shall make to the Interstate Commerce Commission such reports as are now by law required to be made to said commission, and such further reports as the rules of said commission shall from time to time require.

\* \* \* \* \*

##### TAXATION.

SEC. 17. National corporations duly organized under this act are hereby declared to be military and post roads, and instrumentalities for the regulation of interstate commerce. The franchises, stocks, bonds, fixed evidences of indebtedness, operations, and traffic, and the corporation itself, shall be exempt from all taxation by any State or Territory, other than as provided in this act, but the property of such corporation, including its right of way, track, real estate,

stations, office buildings, and equipment, shall be subject to assessment and at such average percentage of their actual value as shall be customary with reference to other property in such State or Territory. In lieu of such tax any State or Territory may impose a tax not exceeding four per cent on such proportion of the gross receipts of such corporation as the number of miles of track in such State or Territory bear to the total miles of track operated by such corporation. In estimating the miles of track each mile of second track shall be regarded as equal to one-half mile of track, and each mile of third or fourth track or siding shall be estimated as equal to one-third of each mile of main track. For the purpose of computation by each State the Interstate Commerce Commission shall certify to the taxing authorities of each State or Territory the gross receipts for the preceding year of the total mileage, as aforesaid, and the proportion of such total mileage operated in such State or Territory.

#### STATE POLICE AND STATE RATES.

SEC. 18. Nothing herein contained shall be construed as interfering with the police laws of any State regarding railroads incorporated under this act and operating in such States, nor shall anything herein contained be construed as affecting the right and power of each State to regulate purely State commerce on railroads organized under this act. But the Interstate Commerce Commission may hold conferences from time to time with the regulating power of any State with a view to such harmonious adjustment and regulation of State commerce and interstate commerce as will protect the public against abuses or extortion, and the railroads against inadequate returns upon their investment, and promote the efficiency of such corporations as common carriers.

#### ACQUISITION OF STATE RAILROADS.

SEC. 19. Such corporation may, with the consent of any State, upon the approval of the Interstate Commerce Commission, acquire the railroad of any corporation now organized under the laws of such State, and may issue for the purchase thereof such amount of bonds and stock as may be authorized by the Interstate Commerce Commission; but such authorization shall only be made after a public hearing, at which the Attorney General shall appear, either personally or by one of his assistants, and no issue of bonds or stock therefor shall exceed the value of such road as ascertained by said commission.

With the consent of the State under which any railroad corporation is or may be organized, merger between such corporation and a corporation organized under this act may be accomplished under this act, and bonds and stock may be issued by any corporation organized under this act for such purpose, provided such proposed merger is approved by the Interstate Commerce Commission and the bonds and stocks issued in the accomplishment of such merger are also approved by such commission.

#### ACCIDENT AND INSURANCE FUND.

SEC. 20. It shall be a condition of the grant and continuance of any franchise to do business under this act that the corporation holding such franchise shall set aside annually 1 per cent of the gross receipts of said corporation to be held as a fund in the Treasury of the United States for the payment of pensions to the employees of such corporation who shall have been disqualified for active service either by injury in the service or by age. The amount and time of payments, the investment of the fund, the disbursing of the same, and the entire management thereof shall be under rules and regulations to be made and from time to time altered by the Interstate Commerce Commission.

#### BOARD OF CONCILIATION.

SEC. 21. The Interstate Commerce Commission is hereby empowered and directed to act as a board of conciliation between corporations organized under this act and their employees as to any dispute arising between said corporation and its employees in the matter of compensation, hours and conditions of labor, the protection of life and limb of said employees, and such power shall be exercised by such commission in accordance with rules and regulations to be made and from time to time altered by said commission.

## PENALTIES.

SEC. 22. Any officer, director, or agent of such corporation who shall be engaged in promoting or opposing any legislation or governmental action, either national or State, shall from time to time make oath to the Interstate Commerce Commission to a statement of his expenditures made in that behalf. No corporation organized under this act shall make any expenditure whatever for the purpose of aiding or defeating any political party or candidate for office, and for every such offense such corporation shall, on conviction, be subject to a fine of \_\_\_\_\_ dollars.

Any officer, director, or agent of such corporation who shall willfully and knowingly make, assist in making, cause or direct to be made any false statement, material misrepresentation, or false entry in any book, report, return, account, or certificate required by the act to be kept, made, or filed, shall be, upon conviction, subject to a fine of not more than \_\_\_\_\_ dollars, or to imprisonment for not more than one year, or both, and shall furthermore be liable in a civil action for damages caused to any creditor or stockholder thereby.

Any officer, director, or agent of such corporation who shall willfully refuse or neglect to perform any duty imposed upon him by this act for which refusal or neglect a penalty is not therein otherwise expressly provided, shall be subject, upon conviction, to a fine of not more than \_\_\_\_\_ dollars, or to imprisonment for not more than one year, or both.

All fines under this act shall be paid into the accident and insurance fund aforesaid.

## DIVIDENDS.

SEC. 23. No such corporation shall pay or distribute to its stockholders in any form during any one year a dividend or dividends exceeding in total amount five per centum upon the entire capital stock. If after the payment by such corporation of its operating expenses, maintenance improvements, and betterments, its taxes, its interest on bonded or other indebtedness, and its contribution to the accident and insurance fund, there shall be a surplus over and above the amount necessary to pay such dividend of five per centum per annum the surplus shall be apportioned as follows: One-half thereof shall be paid into a guarantee fund in the Treasury of the United States for future dividends in case of a slackening of business, such fund to be controlled and invested by the Interstate Commerce Commission, and one-half thereof shall be paid into the accident and insurance fund provided for by this act.

No reduction of rates as to any given railroad shall be made or ordered by the Interstate Commerce Commission, or by any other governmental agency, which shall make it reasonably probable that such five per centum dividends can not be earned upon the total capital stock of the corporation.

## JURISDICTION OF SUITS BY AND AGAINST RAILWAY COMPANIES.

SEC. 24. All national railway companies incorporated under the laws of the United States shall, for the purpose of all actions by or against them, whether at law or in equity, be deemed citizens of the States in which they are respectively operating, and in such cases United States circuit and district courts shall not have jurisdiction other than such as they would have in case such corporations were individual citizens of such States respectively. The provisions of this section shall not be held to affect the jurisdiction of the courts of the United States in cases in which the United States is a party or cases for winding up the affairs of any such corporation.

## RULES.

SEC. 25. The Interstate Commerce Commission may make rules necessary for the complete enforcement of the provisions of this act and from time to time alter, amend, or repeal the same.

## AMENDMENT OR APPEAL.

SEC. 26. This act shall be at all times subject to amendment, alteration, or repeal by act of Congress.

## REGULATION OF RAILROAD RATES—NATIONAL INCORPORATION OF RAILROADS—NATIONAL OWNERSHIP OF RAILROADS.

[Extracts from speech of Hon. Francis G. Newlands, of Nevada, in the Senate of the United States, Wednesday and Thursday, Apr. 4 and 5, 1906.]

The Senate having under consideration the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission—

Mr. NEWLANDS said:

"Mr. PRESIDENT. Although I joined in reporting the pending bill from the Committee on Interstate Commerce, I do not regard it as a comprehensive measure. I think that now is the time to secure full and comprehensive action upon the subject of interstate commerce, and that we should not content ourselves with such fragmentary legislation as we have hitherto enacted.

"I believe that in legislating upon the subject we should, in the first place, create the great carrying corporations that operate between States. We should then provide against overcapitalization. We should provide for a simple system of taxation by the States that would be mathematically certain in its computation, and we should fix a definite return to the stockholders upon the capital invested. We should also take into consideration the relations of the employees of the railroads to these corporations. We should provide for an insurance fund against accidents and old age, and we should also provide for a conciliation of disputes between carriers and their employees. We should frankly recognize the economic necessity of consolidation and combination and the monopolistic character of the business, and regulate all with a proper regard for the interests of the public served by it, the property rights of the capital employed in it, and the human rights of the labor employed by it.

\* \* \* \* \*

"Government ownership presents no difficulties, either constitutional or practical, and the country will certainly drift to it unless the existing abuses of uncontrolled monopoly, of overcapitalization, of accomplished union between the producing and transportation interests of the country, of political control, and of unjust preferences and discriminations are done away with. Even assuming that the Government management may not be economical, the time may come when the people will regard equality of service as of more importance than economy of service. But the plan of national incorporation would give the country the benefits of Government ownership with none of its dangers. It would abolish the evils which have arisen from unrestricted monopoly, automatically bring about a reduction in rates, put the railroads out of politics, and retain the management of the able men whose genius created our present efficient system of transportation. No complaint can be made as to this efficiency; no complaint can be made as to consolidation properly controlled in its capitalization. No attempt should be made to raid the property of railroad investors. No attempt should be made to destroy or impair the existing values of their securities. Unity of control, simplicity of organization, certainty in valuation of railroad property and in return upon such valuation to the stockholders, certainty in taxes, fair recognition of the dangerous character of the service of the employees, proper provision for insurance against accidents and old age, conciliation of disputes between the carriers and their employees, are parts of the full and comprehensive legislation which this subject requires and which would differentiate our legislation from the incomplete and fragmentary legislation in which Congress has thus far indulged regarding interstate transportation.

[Attention is called to the queries and comments of Senators Spooner, Bacon, Heyburn, Gallinger, and Teller during the delivery of the foregoing speech.]

## COMMON SENSE OF THE RAILROAD QUESTION.

[By Francis G. Newlands, United States Senator from Nevada, April, 1905.—Reprinted from the North American Review.]

From the days of the fathers the Nation has dealt with the problems of self-government, one after another, as they have arisen. It has often viewed them first, with apprehension, then grappled with them, solved them, and passed on.

The problem of the hour is monopoly in instrumentalities and commodities essential to the common comfort and prosperity. Of these, the first to be dealt with is the monopoly of transportation. There are three general views in regard to this question.

The great financiers and railroad operators are opposed to any public regulation. They believe the problems should be left to the practical and experienced men who have brought the transportation system to its present state of efficiency.

The President and a very large majority of the House of Representatives believe that the Interstate Commerce Commission should be empowered to revise rates upon complaint, subject to review by a court of transportation. A bill has recently passed the House to this effect.

There is a third view, which seems to be growing rapidly in popular esteem, in favor of outright Government ownership.

I can not agree with the railroad operators that nothing should be done. The power to fix rates of transportation is the power to affect the cost of everything which enters into common consumption, and, thus, in great measure, to regulate the standard of living of our people. Such tremendous power can not safely be left, without restraint, in private hands.

As to the measure which passed the House by the overwhelming vote of 326 to 17, I fear it will be disappointing in its results. It does not present a scientific solution of the problem. It leaves the power of taxation with 45 States and thousands of local political subdivisions, so that there can be nothing in the way of uniformity or permanency in this item. It makes no provision for the valuation of the property, nor does it make any attempt to indicate what would constitute a reasonable rate of interest on the investment. It does not touch the evil of overcapitalization, nor does it propose anything which would abate the alarming evil of political control which has come as an unavoidable incident in the growth of corporate power.

While the sentiment favoring Government ownership is increasing it is plain that the country is not ready for such ownership at this time. The most serious objection to it is that it would interject 1,300,000 employees into the political patronage and render it difficult to drive from power the party controlling this vast influence, however desirable a change of administration might be.

On January 4 I introduced a joint resolution in the Senate (S. Res. 86, 59th Cong., 3d sess.) providing for the appointment of a special commission to consist of four experts on transportation and transportation law, five Senators, and five Representatives, instructed to frame and report to Congress a national incorporation act prepared upon certain principles. This resolution was referred to the Interstate Commerce Committee, which has called upon the Interstate Commerce Commission and the Bureau of Corporations to make report as to the plan outlined, with such suggestions as may be deemed advisable.

The object of my resolution is to unify and simplify the railroad administration of the country; to recognize the evolution in railroading, under which the operation and management of almost the entire railroad mileage has come under the control of about six well-known groups or systems; to place such systems under national incorporation and control; to make the taxes of the railroads fixed and certain; and to provide for fixed dividends, so that hereafter any increase of business will tend mathematically either to a betterment of the roads, to an increase in wages, or to a diminution in rates. These purposes I would accomplish by the following methods:

1. The requirement that all railroads engaging in interstate commerce shall incorporate under a national law in accordance with certain conditions not only permitting but favoring the consolidation of railroads.

2. The valuation of all such railroads by the Interstate Commerce Commission, and a capitalization not exceeding such valuation.

3. The revision by the Interstate Commerce Commission of all rates so applied as to yield an annual return of not less than 4 per cent on such valuation.

4. The exemption of railroad property, including stocks and bonds, from all taxes except a tax on gross receipts, such tax to begin at 3 per cent and increase at the rate of one-fifth of 1 per cent each year until it reaches the maximum of 5 per cent. This tax to be collected by the Government, then distributed among the States and Territories on some equitable basis.

5. The creation of a pension fund for employees disqualified, either by injury or by age, from active service by setting aside in the Treasury a percentage of the gross receipts of the railroads.

6. The arbitration of all disputes between such railroad corporations and their employees as to compensation, hours of labor, and protection to life and limb.

In the United States there are 200,000 miles of railroad, owned by about 2,000 corporations and controlled by about 600 operating companies. But these operating companies have gradually come under the management of 6 groups of ownership, each group dominated by a single individual or by a few individuals. These groups are popularly known as "the Morgan," "the Gould-Rockefeller," the "Harriman," "the Vanderbilt," "the Pennsylvania," and "the Moore" groups.

With two or three exceptions these 2,000 corporations are organized under State laws, though under the existing groups and systems they are operated regardless of State lines, three-fourths of the transportation business of the country being interstate. Corporations organized in one State can operate in other States only by the comity of the latter. The general policy of both the State and National Governments has been against pooling or consolidation of any kind, on the theory that competition is desirable as a means of preventing excessive rates and securing improved service. Nevertheless, practical consolidation has been effected and competition largely eliminated through various methods of leasing, trackage arrangements, holding companies, and community of interest. As a rule these methods have not been tested in the courts, but in the case of the Northern Securities Co. the method was tested and adjudged invalid.

The fact is that the railroad, whether in the hands of the Government or of a private corporation, is a natural monopoly. The steady trend of consolidation is the outcome of economic forces which can not be controlled or appreciably impeded by legislation. The present system is complicated and expensive, involving the maintenance of many unnecessary corporations, the bond and stock issues of which constitute a mass of perplexity confusing alike to the investor, to the tax assessor, and to the rate-regulating commission.

It is clear that there should be unity of ownership, recognized by the law, of such railroads as are now linked together in interstate commerce regardless of State lines. As State legislation can not accomplish this the railroad corporation should be national—the creation of the Government, whose jurisdiction is as broad as interstate commerce itself and whose sovereignty rests on every foot of American soil. The power to create such corporations can not be questioned. It was exercised in the case of the Union Pacific and Northern Pacific Cos. The constitutional powers of the Federal Government relating to post roads, military defense, and the regulation of interstate commerce involve the creation of all the instrumentalities necessary to carry out such powers.

I would require all railroads engaged in interstate commerce to incorporate under a national law, and thus remove every barrier in the way of complete consolidation. I would provide that the amount of stocks and bonds issued for such consolidation should be approved by the Interstate Commerce Commission, and that they should not exceed the actual value of the railroads consolidated, such value to be determined by the commission. I would provide that the commission should approve the amount of bonds and stocks to be issued for the purchase of connecting or intersecting lines, for the betterment of existing roads, and the construction of new ones; and I would make a rigid requirement to the effect that these securities should not exceed the value of the property acquired or the actual cost of the work constructed. The method would effectually prevent future overcapitalization.

Neither of our political parties should object to this plan of national incorporation on the ground that it favors centralization of power. The Republican Party, strongly nationalist as it is, could not; while the Democratic Party should not. It is quite as Democratic to insist upon the full exercise of powers plainly given to the National Government as it is to insist upon the reserved right of the States.

I think there would be no serious difficulty in arriving at a true valuation of railroad property. The basis should be the market value of their securities, though other factors may be taken into consideration. We can afford to be liberal with the present investors if we can secure for all time a valuation based on present conditions and prevent the enormous valuation of the future which increased business and profit will give. Nor should there be much diffi-

culty in determining the rate of interest to be allowed on this valuation. In my resolution I suggest "not less than 4 per cent," leaving the maximum to the determination of the commission. But if we are to have an absolutely scientific adjustment of the matter, the dividends should be definitely fixed on a permanent basis, so as to yield an honest return upon an honest investment.

The advantage of my plan is also apparent in the matter of taxes. Railroads are now taxed under 45 different systems embraced in the laws of as many States. In some they are taxed upon gross receipts; in others upon a valuation of track, and real and personal property; in others franchises are included; and in some States a rapid movement is being made toward assessing them upon the market value of the stocks and bonds issued, the contention being that taxes should be imposed upon the same value as that on which rates are collected. The laws of many States also permit taxation of bonds and stock in the hands of holders—a form of double taxation. There is no uniformity, no permanency. Thousands of local officials are engaged in making the valuation and fixing the tax rates. Since the amount of taxes paid is one of the vital factors in determining the net earnings of the property, there can be no scientific basis for fixing dividends while this crude and chaotic system prevails.

I would exempt all railroad property, including bonds and stocks, from all taxation except a tax on gross receipts, to be collected by the national authorities and distributed among the States in proportion to mileage or volume of business. Under this method stockholders and bondholders would be relieved of that double taxation of which they justly complain, and we would secure absolute uniformity in railroad taxation throughout the land. The total taxes of all the roads during the past year amounted to about \$58,000,000, equal to about 3 per cent upon the gross receipts. I would take this as a starting point, but provide that taxes should be gradually increased, at the rate of one-fifth of 1 per cent per annum, until they reached a maximum of 5 per cent on gross receipts. With the present earnings, this would yield about \$80,000,000 per annum, but earnings are rapidly increasing. The States should not complain of this arrangement, since they would receive from the first all of the revenue they now enjoy from this source, and without the expense of collecting it. Ultimately they would receive much more than their present revenue.

The question will naturally arise. Has Congress the constitutional power to exempt national railroads from taxation by the States? I think it has. Under a national incorporation act the railroads would be the instrumentalities of the National Government for the purpose of carrying out its constitutional function of regulating interstate commerce. As such instrumentalities, the act should exempt them from all State and local taxation, because "the power to tax is the power to destroy," and the Nation can not permit the destruction or impairment of its chosen instrumentalities.

The same argument applies to the rate-making feature of my plan. It would be desirable to exempt such national railroads from State regulation as to local rates. It is confusing to have the national commission and 45 different State commissions at the same time act in judgment upon the same subject. And just as there should be but one taxing power, so also should there be but one rate-regulating power—this in the interest of simplicity, convenience, and certainty. It might be possible for a national incorporation act to exempt national railroads from State regulation of local rates, upon the assumption that the power to fix rates, like the power to tax, involves the power to destroy. But if it should not be thought advisable to attempt this, doubtless some method of amicable cooperation between the Interstate Commerce Commission and the State commissions could be effected which would materially increase the certainty of the calculations.

There is another advantage which would surely arise from the adoption of this policy, and which is of consequence equal to, if not greater than, the advantages which would follow fixed taxes and dividends and permanent peace for the railroad industry. This is the fact that the railroad would go out of politics. The railroad is in politics to-day because its vast property, amounting to more than ten billions, is between the upper and the nether millstone—the upper millstone of the rate-regulating power, and the nether millstone of the taxing power. Between the two, save for the protection of the courts, these properties can be ground to destruction. The uncertainty and insecurity of their situation compels the railroads to go into politics. Hence they take part in the election of every official whose duty is likely to trench in any degree upon the taxing and rate-regulating power. Doing everything systematically, their participation in politics means the organization of a machine in every

State of the Union; and since they pursue the lines of least resistance, this often means alliance with the corrupt element of every community. It is expensive for the railroads and, worse than that, it is a grave menace to the institutions of the Republic.

I submit that these plans may reasonably be characterized as the common sense of the railroad question. Railroad monopoly has come in the course of natural evolution. We have learned that monopoly is inherent in our modern method of transportation. Let it be no longer outlawed, but frankly recognized, welcomed, and made legal. The way to do this is by means of national incorporation.

Vast capital is required to create and maintain transportation facilities adequate to the needs of our growing country. This capital is justly entitled to its fair reward, yet can not be permitted to fix its own profits; for it is not in human nature, and certainly not in the nature of corporations, to consider profits from an unselfish standpoint. Not only is this true, but the railroad is so intimately related to every other industry, and to the daily life of all our people, as to make it desirable that the best service should be rendered at the lowest cost. Indeed, every saving that can be effected in this regard tends to raise the standard of living of the masses. How shall we realize the best service at the lowest cost? Clearly, by giving the railroad investment the largest measure of security and the greatest certainty of earning power. Consolidation under national incorporation is the sure road to this result. It means increased efficiency, greater economy, cessation of wasteful competition and of demoralizing strife between the railroads and the people. It means, too, fixed dividends upon an agreed valuation.

There is a feature of all railroad regulation which seems to have escaped the attention of those who have framed bills on the subject. Rate regulation means, unquestionably, the limitation of dividends upon the investment. This is, in a sense, an invasion of property rights, and demands the concession of compensating advantages. When the public limits the dividends upon a given investment, the public ought to secure them. This is what will happen under the proposed plan. Virtually, the nation would guarantee a certain low rate of interest upon the investment.

Under this plan, the vast increase of transportation business in the future will tend to the reduction of rates and the advantage of the people. The appreciation of values which has occurred up to the time this act goes into effect rightfully belongs to the owners of railroad property. They invested in a speculative undertaking, took their chances, and created a property valuable to themselves and indispensable to the public. But now we propose to eliminate the speculative element, and to create conditions which will make railroad securities almost as good as Government bonds. In return for this great advantage, we ask that capital shall be content with a reasonable dividend upon present valuation. The increase in business which will inevitably arise in the future with the growth of the country will then inure to the benefit of the people in three forms. First, they will get it in the form of betterments, extensions, and constantly improving service. They will get it in the form of better conditions of employment—higher wages and shorter hours for the 1,300,000 men actually engaged in the railroad industry, and a pension fund to secure them in sickness or old age. Finally, this increase will be transmuted into public benefits, in the form of constantly lowering rates of freight and passenger traffic.

The evils of overcapitalization, of stock speculation, and of corporate control of political affairs are not touched by the measure passed by the House of Representatives. Under my plan, the first would be completely done away with, the second would be greatly modified, and the third would be eliminated in so far as it arises from the regulation of taxes and rates.

While this joint resolution does not intend to be a perfected piece of legislation, I believe it contains the germ of a railroad policy which will do equal and exact justice to all parties concerned. To capital, it will give security and assured dividends; to labor, it will give an impartial tribunal for the arbitration of disputes as to wages, hours, and safety appliances; to the public, the lowest rates consistent with the investment and that high degree of efficiency which is born of modern methods. And to the capital invested, labor employed, and the public served, it will, through the action of an impartial tribunal of high character and dignity, charged with the duty of settling all disputes, bring peace and immunity from constant agitation, and put an end to the continuous

warfare which has heretofore existed between the railroad and its employees, and the railroad and the public.

It is plain enough that the people are restive under existing conditions. They are alarmed by the evidence that railroad rates are likely to fall under the absolute control of a few men, and that individuals will be subject to the absolute sway of these few men in matters vitally affecting their interests. The railroads are public highways. The service is a public service, and the conviction is gradually growing in favor of Government ownership.

Unless the railroad system is unified and simplified, the complexity of the situation will drive the country to Government ownership as a solution of the difficulty. The argument in favor of it is simple. It is urged that the Post Office Department is already engaged in transportation which is conducted to the entire satisfaction of the people; that its work now involves expenditures equal to about one-seventh of the operating expenses of all the railroads; that an enlargement of its operations could be secured by organizing a division of transportation in this department; putting at its head a capable man, trained and experienced in railroading; authorizing suit for condemnation against all railroads, the Government entering into immediate possession and retaining the present force of employees and officials, eliminating such of the latter as may be unnecessary under unified conditions; the condemnation to cover simply the interest of the stockholders, the market value of which is now about \$4,000,000,000, leaving existing bonds aggregating about \$6,000,000,000 as a lien upon the property, to be retired as they mature with Government bonds at 2½ per cent, the stock to be paid for by a present issue of Government bonds at the same rate.

The railroads are now capitalized at about \$12,000,000,000, one-half in bonds and one-half in stocks. The market value of the total issue is now about \$10,000,000,000. The gross revenue of all the railroads for the past year was about \$1,950,000,000, an increase over the preceding year of about \$175,000,000. The operating expenses now aggregate about \$1,260,000,000, leaving about \$690,000,000 as the net income. It is urged that, under Government ownership, the Government would have to pay out of this net income the present interest on existing bonds, amounting to about \$270,000,000, and 2½ per cent on the \$4,000,000,000 of the Government bonds, issued in lieu of existing stock, about \$100,000,000, or \$370,000,000 in all, leaving \$320,000,000 for betterments, extensions, and a sinking fund for the redemption of the bonds. This latter sum can be increased by the gradual reduction of the interest on the railroad bonds from an average of 4½ per cent to 2½ per cent, a saving of \$120,000,000 annually. It is contended that a sinking fund could thus be provided which would extinguish the entire debt in less than 50 years and leave the operating expense alone as a charge upon the commerce of the country.

Such is the attractive side of Government ownership; but it ignores, of course, the possible evils of bureaucracy, unbusinesslike methods, political patronage, etc.

The plan of Government ownership has the attractiveness of simplicity and directness. National ownership can, in my judgment, be met successfully only by a policy of national incorporation and control, which has the advantage of almost equal simplicity and directness. I believe the policy I am advocating would give the country nearly all the benefits of Government ownership, with none of its dangers. It would abolish the evils arising from unrestricted monopoly, prevent the entrance of over a million men into the political patronage, eliminate the present corporate interference with and control of our politics and retain in the transportation service the initiative, the enterprise, and the administrative capacity of the brilliant men whose genius created our present magnificent system of transportation out of the crude conditions which prevailed a generation ago.

#### SOLVING THE RAILROAD QUESTION.

[By Francis G. Newlands, United States Senator from Nevada.—From *The Independent*, Mar. 14, 1907.]

The question of governmental control of railroads was not fully and finally settled in last year's legislation on the subject. Very few expected that it would prove to be satisfactorily adjusted in all respects. It was an effort to cope with many disturbing features and some conditions were improved; but there is

abundant evidence that until the system is simplified and unified there will continue to be the cry that the complexity of the situation demands Government ownership as the solution of the problem.

The arguments in favor of Government ownership are attractive and apparently convincing. They tell us that outside the United States three-fifths of the trackage is in national ownership, and ask "Why should not America also own her own railways?" They say: "If the universal tendency is to ownership by nations, why should not we follow their example? If the Nation can build the most gigantic work of modern times—the Panama Canal—and if it can own and operate a railroad from ocean to ocean in Panama, why can it not build and own and operate railroads in the United States? If Chicago can contemplate the ownership of interurban railroads, costing hundreds of millions, can not the Nation take a hand in the ownership of interstate railroads costing billions?"

Such, in brief, is the argument for the Government ownership of the railroads. The method of accomplishment is not difficult. It would be easy to authorize the Interstate Commerce Commission to institute suit to condemn the shares of stock in all railroads in the country engaged in interstate commerce, leaving the bonds outstanding as a lien upon the property. The interests of the stockholders would thus be purchased by the Nation. The Interstate Commerce Commission would step into the position of directors of the various companies, working out a method of national administration. The present bond issue amounts to about \$6,000,000,000, for which Government bonds could gradually be substituted at a saving of interest of about \$100,000,000 annually. The capital stock, which also aggregates about \$6,000,000,000, with a market value a little less, could be condemned at its market value and paid for in United States bonds.

The present annual revenue of the railroads is over \$2,000,000,000, which would amply insure payment of all the fixed charges and interest on the bonds, produce a surplus which would make provision for betterments and extensions, and also provide a sinking fund, which would extinguish the entire debt in 50 years. There can be no doubt about the legality of the procedure. A similar bill unanimously passed the Senate authorizing the condemnation of the stock of the Panama Railroad. So far as the method is concerned, Government ownership presents no difficulties, either constitutional or practical—except possibly the difficulty of securing honest and efficient administration—and the country will certainly drift toward it unless existing evils are effectually abolished. Even assuming that Government management may not be as economical, the time may yet come when the people will regard equality of service as of greater importance than economy of service. But while the sentiment in favor of Government ownership is increasing, it is perfectly plain, for other reasons, that the country is not, as yet, prepared for such ownership. Among these reasons a most serious objection is that it would interject 1,300,000 employees into Government patronage and render it difficult to drive from power the party controlling this vast influence, however desirable a change of administration might be.

I believe there is a better policy—a rational middle ground, solving the railroad question, giving the country all of the benefits of Government ownership with none of its dangers; abolishing the evils which have arisen from unrestricted monopoly; automatically bringing about a reduction in rates; putting the railroads out of politics, preventing political patronage for employees, and retaining the management of the able men whose genius created our present efficient system of transportation out of the crude conditions which prevailed half a century ago.

The history of the roads, which they have been working out for themselves, suggests it. In 1830 there were 23 miles of railroad in America; in 1905, 213,000 miles. This mileage is owned by over 2,000 railroad corporations created by State laws. As the result of consolidation, combination, and recombination the operation of these 2,000 railroads has been mainly unified under the control of less than 10 systems, each organized under the laws of a single State, generally bearing the name of a single man, who is regarded as the dominant factor in its administration. For the machinery of combination the controllers naturally resort to the States whose laws are most lax in proper restrictions as to overcapitalization and other evils.

A railroad, whether in the hands of the Government or of a private corporation, is naturally a monopoly. The steady trend to consolidation is the outcome of economic forces which can not be controlled or appreciably impeded by legislation. The present system is complicated and expensive, involving the maintenance of many unnecessary corporations, the bond and stock issues of

which constitute a mass of perplexing detail, confusion alike to the investor, the tax assessor, and the rate regulating commission. It is clear that there should be unity of ownership, recognized by law, of such railroads as are now, with advantage to the public, linked together in interstate commerce regardless of State lines. As State legislation can not accomplish this the railroad corporations should be national corporations—the creation of the Government, whose jurisdiction is as broad as interstate commerce itself, and whose sovereignty rests on every foot of American soil.

It must be admitted that for the most part consolidation has thus far resulted in greater economy and efficiency; in better, quicker, and more equal service, and in stability of rates. As to whether it has worked any reduction of rates is disputed, and whether such combinations are legal is very doubtful since the Northern Securities decision; but consolidation and merger of railroads engaged in interstate commerce constitute a part of the economic development of such commerce.

The activity of these great railroad combinations in politics has been rapidly increasing. They are in politics because they realize that their property may be at any time assailed either by legislatures or by administrative officers. Their vast concerns are between the upper and the nether millstones—the rate-regulating power and the taxing power. Participation in politics is stimulated by the uncertainty and insecurity of their situations. In the States, as a rule, the railroads enter into the elections of officials, whose duties are likely to trench in any way upon the taxing or rate-regulating power. They are subject to control of Congress in interstate matters and subject to the dictates of 45 State legislatures or commissions as to State commerce. They are also taxed under 45 different systems. There is no certainty, no uniformity, no permanency. Therefore the railroads are in politics, and as they do everything systematically, their participation in politics means either their organization of or identification with a machine in most of the States. As a matter of business, they naturally pursue the lines of least resistance, which frequently means alliance with corrupt elements of the communities in which they operate. Once drawn into politics by the necessities of protection they naturally become aggressive and dominant in political control. It is expensive business for the railroads and it is a grave menace to the institutions of the Republic.

For this reason I believe that the railroads themselves, as well as the public, would welcome some efficient simplification which should guarantee their integrity and legitimate business freedom, under established national administration and recognized authority, removing the necessity and temptation for sharp political practices.

It is clear to my mind that this can easily be accomplished by a national law for the incorporation of railways engaged in interstate commerce, subjecting their capitalization, their stock and bond issues and their relations with their employees and the public to the approval and control of the Interstate Commerce Commission. The roads should still be subject to the reasonable police laws of each State in which they are located, but the stocks and bonds of such national corporations should be free from taxation, as representing simply parts of or interests in railroads, which should be assessed and taxed in their entirety. If the whole is taxed the parts should not be also taxed. The actual property and equipment of such corporations should either be assessed in the State in which they are located at such a percentage of their value as is customary and taxed at the same rate as other property; or better, a regulated tax should be laid upon the gross receipts of the road, and such proportion collected by each State as the gross mileage in the State bears to the entire mileage of the road. A rule of taxation of national instrumentalities by the States could be established by Congress in the case of interstate railroads, as is now done in the case of national banks.

A national incorporation law should limit stock and bond issues to cash paid in, or to the value of property acquired, and no issue of stock or bonds should be legal without the approval of the commission. There are two States in the Union to-day whose corporate legislation is of the highest character—the State of Massachusetts and the State of Texas. What we ought to do is to nationalize either the system of Massachusetts or of Texas and denationalize the system of New Jersey. It is possible that we might in some cases have to use the powers both of persuasion and coercion to bring a few of the firmly entrenched corporations out of their shelter and under national charter. It might be, too, that we should have to validate to a large extent overcapitalization already created,

but if by this means we can save repetition of the errors in the future we shall be conferring a lasting benefit upon the American people.

The best way to maintain for all time the value of these roads is to have the capital stock express the real capital employed. It will be easy then for the commission to determine a just return. In fact, this plan carried out in detail would mean automatic regulation, so that in a short time the commission would have hardly anything to do. A limitation on the dividends would enforce not only betterment of the road but reduction in rates. This is no innovation. When we organized the Union Pacific Railroad we provided that the rates should be diminished after the income reached 10 per cent. In Massachusetts to-day the limitation upon the return on capital in electric roads, which are being built all over the State, is 6 per cent, with an allowance of one-half of the additional profits to the corporation, the other half to be paid to the State. Nothing has ever been paid to the State; neither, of course, has the corporation received the other half. Beyond the 6 per cent limit everything has naturally gone to the betterment and extension of the roads and the reduction of rates. The advantage of a limitation of the dividend return on capital is that it works automatically toward betterment of roads, reduction of rates, and increase of wages, all of which are public benefits. Otherwise, advantages secured and increase of business tend only to increase the profit of the stockholder. The system which I propose, while securing to the stockholder a fair return for his investment, gives the balance of increasing profit to the public. The system will do away with occasion for irregularities. It will prevent any instigation to illegal practices and will tend directly to improving instead of impoverishing both the service and the country.

No one can doubt the power of the National Government to create corporations for the purpose of carrying out the authority intrusted to it by the Constitution. We have created national banks and have acquired and are now operating the Panama Railroad. We incorporated the Union Pacific, the Atlantic Pacific, the Texas Pacific railroads under the powers granted to Congress by the Constitution to establish post offices and post roads and regulate commerce between the States.

Economic efficiency demands that the same road should accommodate both State and interstate commerce. State commerce is subject to the regulation of the State. Interstate commerce is subject to the regulation of the United States, but when it is all so distinctly for the common good there should be no difficulty concerning the cooperation of the greater and the lesser sovereignties under a national incorporation act.

Whenever the National Government creates a corporation for the carrying out of a great public purpose, and when the National Government uses the property of that corporation as an instrumentality for the carrying out of the powers conferred by the Constitution, it can, if it chooses, absolutely exempt such property from State burdens, for the power to tax involves the power to destroy. If it can do this it can certainly lay down the rule by which States shall tax the property of such corporations within their boundaries.

We all know the looseness of State laws regarding the taxation of railroads. The range of assessment is wide, from the valuation of the tracks and right of way to the combined valuation of all the stocks and bonds, which in most States are also assessed again in the hands of the holders. Being thus subject to the conflicting legislation of 45 different States, is it to be wondered at that the railroads are well up in political manipulation? Can we throw \$10,000,000,000 worth of property into the political arena, subject to public control both as to rates and taxes, and ask that \$10,000,000,000 to keep out of politics?

The United States Government should fix a rational and fair rule for the taxation of railroad properties which would leave nothing to discretion, which could be ascertained to mathematical certainty, such as would be the percentage tax on gross receipts, levied by the various States in proportion to their mileage.

There are other provisions which a national incorporation act should contain. One is an insurance and pension fund for employees. One per cent of the gross receipts of all the railroads of the country would be about \$20,000,000 annually. This sum put into a pension fund invested under the direction of the Secretary of the Treasury would yield a wide and important benefit. The Interstate Commerce Commission should also be made an effective board of conciliation between employees and railroads to prevent the war which now follows their failure to agree—war which does not involve them only, and to the detriment of both, but which involves the entire country, sometimes threatening the destruction of commerce between States and communities.

Under this plan the vast increase of transportation business through the future of necessity will tend to the reduction of rates and the advantage of the people. They will feel it in the form of betterments, extensions, and improvement in service. They will feel it in improved conditions of employment—higher wages and shorter hours for the million and a half engaged in the railroad industry and a pension fund for sickness and old age. They will feel it in constantly lowering freight rates and passenger rates. To capital it will give security and assured dividends. To labor it will give an impartial tribunal. To the public it will give the lowest rates that are consistent with the highest degree of efficiency born of modern methods. It will bring peace and immunity from agitation and put an end to the continuous warfare which has hitherto existed, and still exists in spite of all past legislation, between the railroad and its employees and the railroad and the public.

The plan of Government ownership has its attractiveness of simplicity and directness, but it also has the grave dangers of bureaucracy, unbusinesslike methods, political patronage, and many minor objections. The benefits of national ownership can be more successfully secured by the policy of national incorporation and control which possesses the advantages without the dangers. The people demand simplicity in whatever plan is proposed, and unless we unify and simplify the control of transportation in great national corporations whose finances and operations can be easily understood, and whose functions will be entirely taken out of politics, the public will continue to drift with popular agitation toward national ownership as the most easily comprehended solution.

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[Senate Report 355, part 3, Sixty-first Congress, second session.]

#### COURT OF COMMERCE—INTERSTATE COMMERCE—NATIONAL INCORPORATION OF RAILROAD AND NAVIGATION LINES.

[MARCH 7, 1910.—Ordered to be printed.]

##### VIEWS OF MR. NEWLANDS.

[Of the Committee on Interstate Commerce.]

[To accompany S. 6737.]

This bill, creating an interstate-commerce court and to amend the interstate commerce act, was prepared by the Attorney General under the instructions of the President, and has been submitted by the President to Congress under that clause of the Constitution which gives the President the power to recommend to the consideration of Congress such measures as he may deem necessary and expedient. It has many admirable features and is in some respects a step far in advance of past legislation upon the subject; but as its full consideration in the Committee on Interstate Commerce was interrupted by a premature motion to report it to the Senate I have not yet come to a conclusion regarding all of its provisions and shall therefore refrain from comment or criticism regarding them until the debate in the Senate.

I avail myself, however, of the opportunity of a minority report to emphasize the views expressed by me in the report of the so-called "Hepburn bill" four years ago that the legislation regarding interstate commerce in which Congress has thus far indulged has been incomplete and fragmentary. The pending bill, whilst more comprehensive than previous legislation, lacks completeness in that it fails to provide for the valuations of railways and for the creation of national corporate agencies for the conduct of interstate transportation.

The Constitution has vested in Congress the power to regulate commerce between the States and with foreign countries. Interstate transportation has grown so prodigiously that, according to the opinion of experts, it now constitutes three-fourths of the traffic of the country. The States having divested themselves of the power to regulate interstate commerce, and having vested it in the Nation, have a right to demand that the Nation should exercise this power in the fullest and most comprehensive way for the general welfare. Thus far the Nation has exercised its power in a lame and halting fashion, and so abuses have sprung up which the States are powerless to control and which the Nation, whose jurisdiction is as broad as interstate commerce itself, can alone correct.

## THE EVOLUTION OF RAILROADS.

Originally, railroads were organized, constructed, and operated entirely within the boundaries of the respective States. Interstate connection was later made at State boundaries, but each line was operated separately. Then came through service of cars and trains by traffic arrangement. Then came consolidation of control through leases or sale with the legislative sanction of the States affected, the purchasing or leasing road being incorporated under the laws of one State and its acquisitions in other States being accomplished with the consent of their legislatures. Then came the great holding company, generally organized in the State most lax in corporate control, securing control of railroads in many States by acquiring the majority of their stock, such transaction being accomplished by exchanging the exaggerated issues of stocks and bonds of the holding company for shares of the constituent companies.

In this way hundreds of railroad companies organized and operating under the laws of different States would be brought under the control of a foreign corporation organized under the laws of a State in which not a mile of the railroad operated existed. Some States derive large revenues from granting roving charters of this nature. In most cases the consolidation of the roads, save where it involved competing lines, resulted favorably to the public through the perfection of administration and service; but it also resulted in large overcapitalization and in a complexity of financing, puzzling both to the investor and to the regulating tribunals. Had Congress anticipated this consolidation by providing the machinery for it through a national incorporation act, consolidation would have been accomplished without these attendant evils.

## NATIONAL INCORPORATION.

It is my purpose to offer as an amendment to the bill under consideration an additional section, which is appended (Appendix A). This amendment is similar in terms, though somewhat altered in details, to a bill which I have offered at every session for the past five years. It provides for the formation of national corporations for railroad and navigation lines engaged in interstate and foreign commerce; for the acquisition of State railroads by such corporations by purchase, consolidation, or merger, with the consent of the States affected, and for the control of their stock and bond issues. It subjects the physical property and equipment of such corporations to the taxation of the States, but protects them, as national instrumentalities, against the taxation of their franchises, stocks, and bonds. It provides for the exercise of the power of eminent domain under the judicial procedure of the States. It disclaims interference with the police laws of the States, and by declaring that any corporation organized under the act shall be deemed a citizen of every State in which its lines are located preserves the jurisdiction of the State courts, except where a Federal question is involved. It provides for an accident and insurance fund for the relief of employees disqualified by injury or age. It authorizes the Interstate Commerce Commission to act as a board of conciliation in all disputes between corporations and their employees. It limits dividends to 7 per cent, but provides that the Interstate Commerce Commission may direct the application of surplus profits, in whole or in part, to betterment of the roads or of equipment or to extra dividends, or to a guaranty fund against future inadequacy of earnings.

The argument in behalf of national incorporation of transportation companies was presented by me in a report upon the so-called Hepburn bill, filed March 15, 1916, and is as follows:

[The report here referred to is printed above.]

There is little to be added to the foregoing, except to say that whilst the Hepburn bill has been efficacious in correcting many abuses, the evils of overcapitalization, of consolidation of competing lines, and of lack of control over great holding companies have not been diminished. The valuation of railroads has not been made and the abuses of great consolidating and holding companies, created by an irresponsible sovereign, have not been abated.

## NAVIGATION LINES.

It will be observed that the proposed amendment also covers the national incorporation of navigation lines. The agitation which has been inaugurated for the improvement of our inland waterways is constantly increasing in mo-

mentum, and public opinion now demands the expenditure of at least \$50,000,000 annually under comprehensive plans which will tie the bays and sounds and inland waterways of the Atlantic and Gulf coasts together by coastal canals, which will secure the full development of our Pacific coast waters, which will connect the Great Lakes with the Mississippi and Ohio Rivers, which will secure the full development of the Mississippi River and its tributaries, not only for navigation under the national power, but by the cooperation of the States, for irrigation, swamp-land reclamation, the utilization of water power, and every other useful purpose. These plans also involve the coordination of rail and water transportation by the improvement of transfer facilities and sites, and the cooperation of each with the other in diminishing the general cost of transportation. Such a system of waterways would vastly relieve the existing congestion of transportation. The perfection of the transportation system of the country will involve the creation by the Nation of common carriers which will not only own great trunk lines of railway, but also lines of steamers on the lakes, the rivers, and the ocean, thus bringing our foreign transportation in cooperation with domestic transportation, and perfecting a system similar to that of Germany, where rail, river, and ocean lines all work in harmony for the purpose of developing the trade of the country. Combination is an essential part of the development of transportation. A perfect system would involve, as far as possible, one control from shippers to consignee; and this can only be accomplished by transportation lines operating regardless of State or national boundaries, which will utilize the railways, the rivers, and the ocean by methods of carriage adapted to each.

If a proper system were created, most of the evils now complained of would disappear. A system of transportation could be easily devised which would enlist the best powers of the National Government without infringing at all upon the powers of the States, one which would protect alike the railway investor, the railway employee, the shipper, and the public in their respective rights, and at the same time protect the States in all their legitimate powers and change the hostility of the railways toward waterways into friendly cooperation in the interest of the entire people.

#### THE PROCESS OF UNIONIZING.

The purpose of the Constitution was not to centralize, but to unionize, government where the general welfare was affected. We unionized the quarantine because we realized that disease had no respect for State lines; we unionized navigation because nature failed to place the rivers entirely within State boundaries; we unionized banking because the interest of the entire people required one money, a common denominator acceptable anywhere, and a system of exchange inviting universal confidence; and all the reasons which led to the unionizing of these functions of government in the past exist in far greater and stronger degree at this time with reference to the unionizing of transportation. We have just reached the threshold of this great question, and it is important that we shall start right by insisting that the Nation should create its own agents and not permit a lesser sovereignty to do so. All thoughtful men will agree that the mergers of the railways are necessary to the proper development of the transportation system of the country, and that the fullest powers of combination should be exercised, under proper restraints as to capitalization, rates and profits. To break up these mergers and resolve them into their integral parts, bounded and circumscribed in their operations by State lines, would be a national calamity, as grievous to the public as to the railroads. Leaving out of consideration for the present the combination of competing lines, these mergers have been of immense service to the country, although the machinery for perfecting them has been most complicated. The thing complained of is not the fact of combination, but the method of combination, oft-times accomplished by evasion of the laws, unrestrained by adequate law, and fruitful of evercapitalization, frauds on stockholders, and frauds on shippers.

Appended hereto as an exhibit is the amendment which I shall offer as an additional section to the bill.

FRANCIS G. NEWLANDS.

## APPENDIX A.

**AMENDMENT** Intended to be proposed by Mr. Newlands to the bill (S. 6737) to create a court of commerce and to amend the act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, and for other purposes, viz: Add an additional section, as follows:

**SEC. 18. (A)** That any number of persons not less than fifteen may, under and subject to the requirements and conditions in this act provided, form a corporation for the purpose of constructing, equipping, maintaining, improving, and extending, and, as a common carrier, operating, a line or lines of railroad or navigation between points in different States of the United States, or between a State and a Territory, or in a Territory, or between a State and the District of Columbia, or between the United States and foreign countries, or for the purpose of acquiring by purchase or lease and operating any such line or lines of railroad or navigation already constructed or established, or for all of such purposes.

**POWERS.**

**(B)** That every corporation organized under this act shall have powers and be subject to restrictions as follows:

To assume a corporate name, and under such name to have corporate succession for a period stated in its certificate of incorporation, and if no other period be therein named, such succession shall be perpetual.

To sue and be sued in its corporate name.

To issue bonds and capital stock as hereinafter provided.

To adopt, use, and alter a corporate seal.

To elect all necessary officers and appoint managers and agents as hereinafter provided.

To hold, purchase, convey, mortgage, or lease such real or personal property as the lawful purposes of the corporation may require, including the right to acquire and hold the capital stock or bonds, or both, of other railroad corporations and corporations properly subsidiary or incidental to the management and operation of the railroad business, including navigation lines, and to lease the property of such other corporations: *Provided*, That such right to acquire and hold capital stock of other railroad corporations and corporations so subsidiary thereto shall be exercised only by a national railway corporation which itself operates the railroad or navigation lines of which the stock is so acquired and held.

To manage its business, make contracts, incur liabilities, and borrow money, subject to the requirements or provisions or other conditions in this act contained.

To make by-laws not inconsistent with the laws applicable to such corporation or the rules of the Interstate Commerce Commission.

**CAPITALIZATION.**

**(C)** That such corporation shall provide for and issue only such amount of bonds and stocks as may be necessary for such construction or purchase or for the improvement or equipment of the railroad and navigation lines constructed, established, or acquired, together with the proper cost of organizing and promoting the company and the amount of capital reasonably required in addition for working capital. No bonds or stock shall be issued except for money paid or for property acquired at its actual cash value. The issuance of stock or bonds and the amount thereof shall in every case be subject to the approval of the Interstate Commerce Commission, which shall grant full public hearings in relation thereto, and of such hearings public notice shall be given by or under the direction of the commission. The United States shall be represented at such hearing by the Attorney General or one of his assistants. The commission shall certify in writing to the incorporators or to the corporation its determination, and shall record the same in its records, and all bonds and stock not issued in compliance with such determination shall be void as against such corporation.

**CERTIFICATE OF INCORPORATION.**

**(D)** That the original incorporators shall sign and acknowledge a certificate setting forth the following facts:

The name of the company, which shall contain the words "National Railway Company," and which shall not be the same as that of any other corporation

organized under this act or sufficiently similar thereto to cause confusion therewith.

Nature of the business proposed to be engaged in.

Duration of corporate existence.

Principal place of business.

Route of railway already built.

Route of railway proposed to be built.

The proposed amount of bonds and stock, which shall be determined as provided in section three, and the respective amounts, conditions, and privileges of the separate classes of stock if it is desired to have more than one class.

The par value of the shares.

The number of shares subscribed by each incorporator.

The said certificate, together with the engineer's report provided for under section six in cases where such report is required, shall be submitted to the Interstate Commerce Commission, which shall direct such amendments therein or additions thereto as may be deemed necessary, and shall, when such certificate is in conformity to law and in other respects is approved by the commission, indorse the approval of the commission thereon, and record the said certificate, with such indorsement, and the day and hour of the submission of the approved certificate, in proper books kept by the commission for such purpose. The corporate existence shall commence with such day and hour, and such record and a duly certified copy thereof shall be prima facie evidence of such corporate existence.

#### FINDING OF PUBLIC NECESSITY.

(E) That in case such certificate shall provide for the construction or establishment of new lines of railroad or navigation, the commission, as a condition precedent to such corporate existence, and before approving such certificate, shall determine, after public hearing, whether public convenience and necessity require the building of such new lines said determination and the method of arriving thereat to be in accordance with rules established by said commission. If such determination shall be to approve the construction aforesaid, it shall be recorded with said certificate of incorporation. If such certificate shall provide for the acquisition by purchase, lease, or otherwise, of any line already constructed or in course of construction, it shall be lawful for the commission, after hearing, to deny the filing of such certificate if, in its judgment, after public hearing, such acquisition would be detrimental to the public interest. But if the commission shall approve such acquisition, as in the public interest, its determination shall in like manner be recorded with said certificate of incorporation.

The construction, extension, or acquisition of additions to any line or lines of railroad or navigation, or the acquisition of any other lines or parts of lines or shares of stock in other companies as aforesaid, by any company incorporated under this act, is hereby prohibited unless and until such construction, extension, or acquisition shall receive the approval of the commission, as of public necessity or in the public interest, upon application therefor duly filed and public hearing held; and any such approval shall be stated by the commission in writing, with its reasons therefor, and recorded in its records.

#### ENGINEER'S REPORT.

(F) That no certificate of incorporation provided for in this act shall be filed or recorded unless the same is accompanied by the sworn report of one or more skillful engineers, showing, as far as practicable, the character, structure, grades, cost of duplication, cost of construction, and the manner of construction of the road or roads, line or lines, proposed to be built, established, or required, and containing statements in relation to such other matters as rules adopted by the commission may require.

#### MEETING OF STOCKHOLDERS.

(G) That the commission shall establish rules governing the first and other meetings of stockholders, notices thereof and quorums required thereat, the election of the board of directors, executive committee, president and other officers of the company, and for the adoption of by-laws. Such rules shall provide for not less than five nor more than fifteen directors, an executive committee of the board of directors, with managing powers, the election of a presi-

dent, vice president, treasurer, secretary, and such other officers as the by-laws shall require. The by-laws of the company shall not be effective until approved by the commission, as in accordance with its rules. The commission shall have authority to amend such rules from time to time as may, in its judgment, be required. The by-laws of the company shall provide for the removal of directors by votes representing two-thirds of the stock issued and outstanding at any annual or special meeting. Stock held in the company's treasury shall not be voted at any meeting.

#### STOCKS AND BONDS.

(H) That in case the entire stock shall not have been subscribed for prior to the filing of the certificate of incorporation, the directors shall open books of subscription to such stock in such manner as may be provided for by the rules of the Interstate Commerce Commission. Before issuing the bonds of such corporation the amount and time and term thereof and the rate of interest must be approved by said commission. Before offering such bonds upon the general market they must be offered to the stockholders at not less than par, and thereafter such portion thereof as shall not be taken by the stockholders may be sold in the general market upon such notice as the Interstate Commerce Commission shall by rule prescribe.

#### CERTIFICATE OF ORGANIZATION.

(I) That when at least one-half of the capital stock shall have been subscribed for a majority of the directors shall make and swear to a certificate setting forth the following facts:

Names and addresses of directors.

Names and addresses of officers.

Amount of capital stock subscribed for.

Amount of capital stock paid for in other than cash, specifying separately and in detail the nature of such consideration and the total amount of stock separately allowed for other than cash.

All delegated powers conferred by the by-laws on others than the board of directors.

A complete and true copy of the by-laws of the corporation. And it shall be the duty of the board of directors, within thirty days after the passage of any vote, amendment, altering, repealing, or adding to the by-laws of the corporation, to file with the Interstate Commerce Commission a complete and true copy of such vote, amendment, alteration, repeal, or addition.

Such certificate shall be submitted to the commission, and after having been amended under the direction of the commission to conform to the requirements of this section, if such amendment be necessary, the approval of the commission shall be indorsed thereon, and the certificate, with its indorsement, shall be recorded in full in a proper book kept by said commission for such purposes, together with the day and hour of the submission of the approved certificate, and said corporation may begin business on and after such time.

#### CAPITAL STOCK.

(J) That the par value of each share of stock shall be one hundred dollars. No stockholder shall be liable for the debts of the corporation beyond the amount of his subscription to the capital stock, except as expressly provided in this act. Each stockholder shall be entitled to a certificate of stock, which shall evidence the amount of stock held by him. The stock shall be personal property; shall be transferable only on the books of the company, in such form as the by-laws may prescribe; and shall be subject to a lien in favor of the corporation for all debts due to said corporation from the owner of said stock. The stock may be sold for unpaid subscriptions in such manner as may be prescribed by the rules of the commission. Each share of stock shall entitle the holder of record to one vote, and in voting for directors any stockholder may cast his vote or any part thereof for one candidate, so as to exercise the privilege of a cumulative vote. Votes may be cast by proxies, and the form of such proxies and the list of stockholders entitled to vote shall be prepared as provided by the by-laws in accordance with the rules of the Interstate Commerce Commission.

Stockholders, by two-thirds vote of each class of stock, may create different classes of stock, either in the original or in subsequent issues, if the Interstate

Commerce Commission shall find that the creation of such classes of stock is proper and necessary for the purposes of the corporation, and such stockholders may, by such vote, determine the preference, conditions, and privileges attaching to such classes, respectively: *Provided*, That preferred stock so issued and any stock so issued other than common stock shall have no voting powers.

#### BONDS.

(K) That the corporation may, by a majority vote of its stockholders, issue bonds, notes, or other evidence of indebtedness, but the total of all such obligations of the corporation shall be determined by the Interstate Commerce Commission.

#### MEETINGS—INCREASE OF DECREASE OF STOCK.

(L) That annual and special meetings of stockholders shall be held, notices thereof issued, and quorums required thereat, in such manner and form as provided by the by-laws, in accordance with the rules of the Interstate Commerce Commission. The stockholders shall have power to elect directors and by two-thirds vote to remove them; by majority vote to increase the issue of any class of stock, subject to the provisions of this act, and by such vote to decrease any class of stock.

Stockholders may also by such vote of each class of stock make any alteration or amendment in the certificate of incorporation of the company not inconsistent with law which it would have been lawful to insert or omit or make in its original certificate of incorporation, such alteration or amendment to be subject to the approval of the Interstate Commerce Commission.

#### REGULATION BY INTERSTATE COMMERCE COMMISSION.

(M) That all corporations organized under this act shall be subject to the provisions of the act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and all acts amendatory thereof.

#### BOOKS AND RECORDS.

(N) That the treasurer shall keep proper books of account of all transactions of the corporation, and the secretary shall keep proper and full records of the transactions of all meetings of the stockholders, the board of directors, and the executive committee, and all of said books shall be open to the inspection of the commission at any time, and also to the inspection of any stockholder at any reasonable time and place. It shall be the duty of the respective officers having charge of such books and records to permit upon demand, after ten days' previous notice, such inspection by a stockholder, unless such right of inspection shall be enjoined as above provided.

#### REPORTS.

(O) That all corporations formed under this act shall make to the Interstate Commerce Commission such reports as are now by law required to be made to said commission, and such further reports as the rules of said commission shall from time to time require.

#### DISSOLUTION.

(P) That any such corporation may, after lawful private or public sale of the railway property and equipment, upon the vote of three-fourths of its capital stock, wind up and close its business and dissolve under such forms of procedure as to claims, distribution of assets, notice to creditors, publication of votes and certificates of dissolution as may be prescribed by the rules of the Interstate Commerce Commission.

#### EMINENT DOMAIN.

(Q) That any corporation organized under this act may acquire rights or property necessary for the proper execution of its corporate purposes, including right of way, sidings, terminals, depots, water rights, gravel, and stone. In case the corporation and the owner of such rights or property are unable to

agree upon a price therefor and the same can not be acquired by agreement, the corporation may proceed in any competent court in the State or Territory where such property is located for the condemnation of such rights or property. Such proceedings shall be conducted pursuant to the existing statutes of such State or Territory regarding the condemnation of property for public use.

#### TAXATION.

(R) That railroads and navigation lines owned by corporations duly organized under this act are hereby declared to be instrumentalities for the regulation of interstate and foreign commerce. The franchises, stocks, bonds, fixed evidences of indebtedness, operations and traffic, and the corporation itself shall not be subject to taxation by any State or Territory, but the property of such corporation situate in a State or Territory, including its right of way, its real estate, stations, office buildings and equipment, shall be subject to assessment at such average percentage of their actual value as shall be customary with reference to other property in such State or Territory, and to the customary taxes on such assessment.

#### STATE POLICE AND STATE RATES.

(S) That nothing herein contained shall be construed as interfering with the police laws of any State regarding railroads incorporated under this act, and operating in such States, nor shall anything herein contained be construed as affecting the right and power of each State to regulate purely State commerce on railroads organized under this act. But the Interstate Commerce Commission shall hold conferences from time to time with the regulating power of any State with a view to such harmonious adjustment and regulation of State commerce and interstate commerce as will protect the public against abuses or extortion, and the railroads against inadequate returns upon their investment, and as will promote the efficiency of such corporations as common carriers. With such end in view the said commission shall call and hold at least once each year a conference with the railroad commissioners of the several States, and with other State officers having any duty of supervision, taxation, or regulation of railroads within their respective States. Such conference shall be held in the District of Columbia, and the presiding officer at such conference shall be the chairman of the Interstate Commerce Commission, or some other member of said commission designated by its chairman. The proceedings of such conference shall be printed or distributed by or under the direction of the Interstate Commerce Commission.

#### ACQUISITION OF STATE RAILROADS.

(T) That such corporation may, with the consent of any State, upon the approval of the Interstate Commerce Commission, acquire the railroad of any corporation now organized under the laws of such State, and may issue for the purchase thereof such amount of bonds and stock as may be authorized by said commission, but such authorization shall only be made after a full public hearing, at which the Attorney General shall appear, either personally or by one of his assistants, and no issue of bonds or stocks therefor shall exceed the value of such road as ascertained by said commission.

With the consent of the State under which any railroad corporation is or may be organized, merger between the corporation owning such road and a corporation organized under this act may be accomplished under this act; and bonds and stock may be issued by any corporation organized under this act for such purpose: *Provided*, That such proposed merger is approved by the Interstate Commerce Commission, and the amount of the bonds issued, together with the rate of interest thereon, and of the stock issued in the accomplishment of such merger, are also approved by said commission. Such issues of bonds and stock may include a reasonable allowance for the expenses of merger and promotion. Such merger shall not include transportation lines which are directly or substantially competitive.

#### ACCIDENT AND INSURANCE FUND.

(U) That it shall be a condition of the grant and continuance of any franchise to do business under this act that the corporation holding such franchise

shall set aside annually a percentage of the gross receipts of said corporation, not exceeding one per centum, to be held as a fund in the Treasury of the United States for the payment of pensions to the employees of such corporation who shall have been disqualified for active service, either by injury in the service or by age. The conditions entitling employees to pensions, the amount and time of payment, the investment of the fund, the disbursing of the same, and the entire management thereof shall be under rules and regulations to be made, and from time to time amended, by the Interstate Commerce Commission.

#### BOARD OF CONCILIATION.

(V) That the Interstate Commerce Commission is hereby empowered and directed to act as a board of conciliation between corporations organized under this act and their employees as to any dispute arising between such corporation and their employees in the matter of compensation, hours, and conditions of labor, the protection of life and limb of said employees, and such power shall be exercised by said commission in accordance with the rules and regulations to be made and from time to time altered by said commission. All powers and duties now exercised by the chairman of said commission and the Commissioner of Labor under the act entitled "An act concerning carriers engaged in interstate commerce and their employees," approved June first, eighteen hundred and ninety-eight, are hereby transferred to, vested in, and required of the Interstate Commerce Commission.

#### PENALTIES.

(W) That no corporation organized under this act shall make any expenditure whatever for the purpose of aiding or defeating any political party or candidate for office, and for every such offense such corporation shall be subject to a fine of — dollars.

Any officer, director, or agent of such corporation who shall willfully make, assist in making, cause, or direct to be made, any false statement, material misrepresentation, or false entry in any book, report, return, account, or certificate required by or under this act to be kept shall be, upon conviction, subject to a fine of not more than — dollars, or to imprisonment for not more than one year, or both, and shall furthermore be liable in a civil action for damages caused to any creditor or stockholder thereby.

Any officer, director, or agent of such corporation who shall willfully refuse or neglect to perform any duty imposed upon him by this act, for which refusal or neglect a penalty is not herein otherwise expressly provided, shall be subject, upon conviction, to a fine of not more than — thousand dollars or to imprisonment for not more than one year, or both.

Any corporation organized under this act which shall fail to conform to and comply with any of the requirements, or observe any of the prohibitions, in this act contained shall be subject, upon conviction, to a fine of not less than — dollars nor more than — dollars, and each day of the continuance of such failure shall be deemed a separate offense.

All fines collected under this act shall be paid into the accident and insurance fund herein provided.

#### DIVIDENDS.

(X) That no corporation organized under this act shall pay or distribute to its stockholders in any form, during any one year, a dividend or dividends exceeding in total amount seven per centum upon its capital stock without the consent of the Interstate Commerce Commission. If, after the payment by such corporation of its operating expenses, maintenance, improvements and betterments, its taxes, its interest on bond or on other indebtedness, and its contribution to the accident and insurance fund, there shall be a surplus over and above the amount necessary to pay such dividend of seven per centum per annum, such surplus shall be reported to the Interstate Commerce Commission, which may direct the same to be applied, in whole or in part, to betterment of the road or equipment, or to extra dividends, or to a guaranty fund in the Treasury of the United States against future inadequacy of earnings or reduction in dividends, such fund to be controlled and invested under the direction of the Interstate Commerce Commission.

## JURISDICTION OF SUITS BY AND AGAINST RAILWAY COMPANIES.

(Y) That any corporation organized under this act shall, for the purpose of all actions by or against it, real, personal, or mixed, and all suits in equity, be deemed a citizen of every State in which its lines are located, and in such cases circuit and district courts of the United States shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State. The provisions of this section shall not be held to affect the jurisdiction of the courts of the United States in cases by the United States, or by direction of an officer therein, or cases for winding up the affairs of any such corporation.

Any case involving the recovery of fines or penalties under this act may be brought in the circuit court of the United States for any judicial district wherein the corporation has its principal office or through which the line or any part thereof may run. In every such case, for the purposes thereof, the jurisdiction of the court shall be coextensive with the territory of the United States, and in writs of subpoena, removal of persons, execution, and all other process shall run throughout the United States. All existing laws pertaining to the taking and compelling of testimony in cases arising under the act to regulate commerce, or its amendments, shall apply in cases arising under this act.

## RULES.

(Z) That the Interstate Commerce Commission shall make and from time to time alter, amend, or repeal rules necessary for the complete enforcement of the provisions of this act.

## AMENDMENT OR REPEAL.

(ZZ) That this section and all franchises acquired under it shall be at all times subject to amendment, alteration, or repeal by act of Congress.

The CHAIRMAN. Mr. Thom, we all understand that the numerous railways of the country, aggregating at one time many thousands, have been organized in great systems, each one of these systems embracing numerous States. Will you please state under what method of organization these consolidations of State railways have been organized, and the advantages or defects which those methods of organization have?

Mr. THOM. The methods have very greatly differed. At times there have been conditions of universal bankruptcy in certain sections which resulted in sales under foreclosure of a great many roads. In cases of that kind it not infrequently happens that the physical properties have been bought by the same interest and are in the hands of one company. It also happens that in obtaining ownership of the properties there has been a purchase of the capital stock by what became then the parent company, with control and operation of the stock ownership. It also happens that a great many of the physical properties have been leased to one company and the operation has been continued under long-term leases—the operation of the physical property. So that the three methods have been the actual acquisition and ownership of physical properties, the acquisition of stock, and thereby control of the acquired property, and a lease of the physical property and the operation under the lease.

The CHAIRMAN. The main corporation in these systems is organized under the laws of a single State, is it not?

Mr. THOM. Yes; it may be at times that they also have corporations or franchises from other States, but the parent State, and sometimes there is statutory power conferred upon the company of another States by express terms, as, for example, the Baltimore & Ohio Rail-

road operating in the State of Virginia, conferred upon the Maryland corporation certain powers. There are also, at times, corporations of various States, the company being built under the corporate charter granted by several adjoining States, and then the lines united. Illustrations of that may be given. There have been a great variety of methods in the creation of these continuous lines.

The CHAIRMAN. Now, where a corporation organized under the law of one State, for the purpose of constructing or operating a road in that State, seeks to acquire the property of railroads engaged in operating in other States, has it been customary to obtain the consent of the States?

Mr. THOM. Very frequently there has been sufficient power under the charter of the acquired road to dispose of its property, or the stock, to the corporation of another State. Wherever that is not done, of course, you have to have special authority from the State.

The CHAIRMAN. From the State in which the property lies?

Mr. THOM. From the State in which the property lies.

The CHAIRMAN. As a rule, are there general statutes covering those subjects so as to make acquisition easy, or do the corporations have to get special legislation upon the subject?

Mr. THOM. It has been mostly done under the original charters, my impression is. Of course, I am speaking now from general impression. I have not gone into this thing in any great deal of detail, but my general impression is that there has been a tendency on the part of the States, in giving the charters, to grant powers adequate to this transfer from one to another. There have been a great many makeshifts necessary. I suppose the ideal way of creating a property is that there shall be one title to the whole property; the company shall own all the physical property that it operates. That is the ideal way. Instead of that there are a very great many makeshifts that have to be adopted, and that is so of perhaps nearly all the railroads of the country. The Pennsylvania Railroad at this time, I think, has over 100 different corporations within its system—how many I do not know. The figure that is in my mind is 149, but I can not be accurate about that. I have never looked into it. But it is a great many, and they are feeling the difficulty of this tremendous number of corporate entities in a single system.

The CHAIRMAN. Where a railroad system, organized in one State, has sought to acquire property in other States with a view to meeting the national requirements for interstate commerce, has there been thus far very much complexity in the arrangements?

Mr. THOM. There has been very considerable complexity. In some places it is absolutely impossible—you take, for example, in the State of Texas—the State of Texas does not permit a foreign corporation to own a railroad in that State. The only way, therefore, you can have a through line—continuous line—made up of any part of a railroad in Texas is that a Texas corporation shall own that property, and the outside corporation has to own the stock. A very serious situation arises about that in Texas for this reason: The laws of that State, as I understand it, have required valuation of properties in Texas—railroad properties—and they will not issue any—will not permit the issue of any securities in excess of that valuation. The valuation is away down below the capitalization at the time the valuation was made. As a result there have not been any

Texas roads that have been able to get any money at all on their property, and the only way they could be kept up to anything like the requirements of the public was that the parent company outside of Texas should lend its credit to raise the required funds, and in that way to furnish the tracks and the yards and the equipment necessary for the Texas roads.

The CHAIRMAN. That parent company is popularly known as the holding company, is it not?

Mr. THOM. No; it is not the holding company. That is not what my understanding is of a holding company. I do not understand that a company that is itself an operating company, engaged in that business, and simply increases its system by operating and holding the stock of another company is what is ordinarily known as a holding company. A holding company, as I understand it, is a company that does not operate at all, but holds the stock of a good many roads merely as a corporate entity, created for the purpose of holding them. Now, it is all a matter of definition. Of course, you can call it either way you please. The operating company does hold the stock, but it is not what I have understood to be popularly known as a holding company.

The CHAIRMAN. There are companies that are exclusively holding companies that do not operate the roads?

Mr. THOM. Yes.

The CHAIRMAN. There are other companies that own roads, and also are holding companies, in the sense that instead of owning the physical properties they own the stock of operating companies?

Mr. THOM. That is true.

The CHAIRMAN. You referred to three classes of railway companies, one holding roads under ownership, another controlling roads through the ownership of their stock, without operation, and others controlling roads by lease. I imagine you would add to that a fourth class, the corporations to which you have referred, that hold the physical property and also hold the control through the ownership of stock?

Mr. THOM. I understand the latter one that you mention to be covered by my first division into three, and this other one that has been added about holding companies has come up since, but you can divide them into those four classes—four methods.

The CHAIRMAN. Now, about how many large systems are there in the United States, and what proportion of the mileage of the country do they own?

Mr. THOM. Now, I can not answer that, Senator. I do not know how many there are, and I have not made any estimate of the amount of mileage that they hold. I think I have seen it stated in some of your writings that there are about 10.

The CHAIRMAN. Yes.

Mr. THOM. But I have not gone over that myself and do not know.

The CHAIRMAN. Would the system which you propose of national incorporation of railways have the advantage of simplicity in organization?

Mr. THOM. Undoubtedly.

The CHAIRMAN. And operation, as compared with the present system?

Mr. THOM. Both. It would also have advantages in methods of financing—simplicity of financing.

The CHAIRMAN. Take the system with which you are familiar, the Southern Railway System, which, I presume, is a fair illustration of the method of organization of the great systems of railways in the country. Will you state what is the State of the parent organization?

Mr. THOM. The State of the parent organization is Virginia, and it has large and liberal powers, both in respect to acquiring properties of other roads and being acquired by other companies. It also has large powers in respect to the question of stock in other roads, and there could probably be no better illustration of the different methods of ownership than are presented by that problem. For example, you take what is known as the general mortgage. You will find there a great many pages—perhaps 50—describing the various properties that are mortgaged; describing every conceivable method of ownership; the stock of such and such a road is mortgaged; the trackage right on another road is mortgaged; the leasehold right on another road is mortgaged; the physical property actually owned is mortgaged; and so it goes on for pages, describing the methods of ownership, or the interest the Southern Railway has in these various properties.

The CHAIRMAN. In how many States does that system operate?

Mr. THOM. Eleven.

The CHAIRMAN. All of them Southern States?

Mr. THOM. No; in addition to the tier of States between the Potomac and the Mississippi River and south of the Ohio they operate also in the States of Indiana and Illinois.

The CHAIRMAN. How many different railways have been gradually incorporated in the Southern Railway System?

Mr. THOM. I could not tell you that, but a great many.

The CHAIRMAN. A hundred?

Mr. THOM. I would have to verify that. I have never enumerated them.

The CHAIRMAN. How do the various States within whose boundaries the Southern System operates, outside of Virginia, regard the control of the operations of the roads within their boundaries, by a foreign corporation, organized under the laws of Virginia?

Mr. THOM. I must say that I have never seen any very marked degree of jealousy about that.

The CHAIRMAN. You have not seen any marked opposition to the inclusion of these various State railways, in the system organized under the laws of Virginia?

Mr. THOM. No; it is true that I came into the life of that road after that had all been accomplished.

The CHAIRMAN. When did you become associated with the Southern Railway Co.?

Mr. THOM. I came in—I was leased into the Southern with the Atlantic & Danville road.

The CHAIRMAN. And when was that?

Mr. THOM. They acquired me by lease in 1899.

The CHAIRMAN. There were a large number of roads absorbed in that system, were there not?

Mr. THOM. A very large number; yes, sir.

The CHAIRMAN. Has that union of roads under a Virginia corporation resulted to the advantage of the efficiency of transportation?

Mr. THOM. Oh, immensely. That has been done as a distinct answer of the transportation people to the economic necessities of the communities they serve. The Southern Railroad is in a small market; that is, practically small markets. Of course there are large and valuable markets in that section, but the great demand of the people there is for access to the larger markets, both of this country and of the world, and in order to accommodate that movement of commerce, these roads were thrown together. I do not mean by that to say that there were not reasons of financial nature which appealed to the people having that in charge, too, but that union would have been impossible if only the financial views of the managers had been involved. The financial views of the managers were sustained by the universal recognition that the movement of commerce required these long, continuous lines.

The CHAIRMAN. You speak of the universal recognition. Do you understand by that that the public opinion of the region in which your roads are operated sustained this union of railways?

Mr. THOM. Undoubtedly.

The CHAIRMAN. Have you observed any signs of dissatisfaction with it and a disposition to return to the old system of separated railways?

Mr. THOM. None whatever. It is an answer to the absolute necessity of commerce.

The CHAIRMAN. Then your contention is that this method has been the result of economic necessities?

Mr. THOM. Yes; and commercial evolution.

The CHAIRMAN. Now, would it have been much easier and simpler to have accomplished that union of railroads necessary to the economic development of the South under a national incorporation act than under the present system?

Mr. THOM. Undoubtedly.

The CHAIRMAN. Would it have been attended with less expense, in your judgment?

Mr. THOM. Yes; undoubtedly.

The CHAIRMAN. And less friction?

Mr. THOM. Undoubtedly; and would have made a more absolutely workable instrument. You would have had a unit then. The systems are now held together in an artificial way. They are contrivances to meet legal difficulties. They are not made one complete and homogeneous unit.

The CHAIRMAN. Are we to understand that the railway executives and managers throughout the country are now agreed upon the importance of national incorporation of railways?

Mr. THOM. Of course, in a large body of men, in railroad life as well as in any other, you will find men of different views. You find also, of course, every now and then a company peculiarly situated, having advantages under the present conditions which they do not feel that they could surrender for an untried condition. But I think I can say—I refer to that class of people merely to emphasize the unity of view which the railway managers of the country have

come to in respect to this matter. We have debated this question a good deal among ourselves, and on the committee of council, of which I am chairman, which has associated with it the committee of executives, known as the Railway Executives' Advisory Committee, when we first commenced to debate it there were two who were very much opposed to it. I imagined, of course, that they were representing the policies of their management, and we had an opportunity subsequent to that time to debate the question before the presidents. I found that I had been correct in supposing these gentlemen were representing the policies of their companies, and they were two of the very important companies of the country. After debating it the executives came in to the plan of a compulsory incorporation bill, not an elective one, because they believed it would be best for the country, while they might have to give up some of the special features of their charters, their privileges, which they valued, they believed they would get more in the way of helpfulness by coming to a system of this sort than otherwise, and so those who do not agree are in number very small. I do not know but one. There may be two or three.

The CHAIRMAN. I will state, Mr. Thom, that in 1904 and 1905 an investigation was made by the Interstate Commerce Committee of the Senate, of which I was a member, regarding the requirements of interstate commerce, and particularly the advisability of giving the Interstate Commerce Commission the power to fix rates, and during that investigation I presented a scheme for national incorporation and questioned a great many of the railroad executives and managers regarding it, and I found that apparently none of them viewed it hospitably, so I was compelled to present my views in a separate document in connection with the report of the committee upon this subject. I also took up the question again in the Commerce Court investigation, and there found that the views were not hospitably entertained by the railways, and by few of the members of the committee itself, as was the case with the previous committee considering the Hepburn bill. I believe the only witness during all that time who encouraged me at all in the views which I entertained was Senator Cummins, who was then governor of the State of Iowa, and who appeared before the committee. That was on the Hepburn bill. Now, has this change of view upon the part of the railway executives been a recent change, and what has occasioned it?

Mr. THOM. It has been a gradual change to a realization of what is now believed to be a necessity. The difficulties of railroad management have been becoming more and more apparent; the view that no industry could flourish where both its income and its expenses were beyond the control of the owner, and especially that that could not be done if the income was subject not only to one comprehensive governmental control, but could be cut down by innumerable governmental bodies with different policies, different outlooks, who were, in the nature of things, unable to take more than a partial view of the property; this has led those responsible for the success, primarily responsible for the success of these instrumentalities of commerce, to look to a method of strengthening them in the public confidence, and they have come to believe that that is impracticable unless the United States Government will take charge of the instrument of interstate commerce and will regulate it in ac-

cordance with what probably actually is. It is a national problem, and the standard of the sufficiency ought to be fixed by one authority, which can take a comprehensive enough view to determine how good it ought to be and what is necessary to its successful service. Now, that led to the conclusion that when you once concede that there must be governmental regulation—it led to the conclusion that there should be a system of single governmental regulation. The differing views of the States in regard to what a railroad ought to be allowed to do in the way of improvement, what it ought to be allowed to do in the way of equality of terms, as between the different States, and similar problems, have borne in upon the railroad management until they are convinced that they can no longer cope with their problems unless they have a single regulating power. From that it was easy enough to see that they had been mistaken heretofore in their view that there should not be a system of national incorporation, because national incorporation is an essential facility in the way of having complete national regulation.

Now, of course, we are all obliged to admit that on the part of the owners of railroads and on the part of the managers of railroads there has been an unwillingness to accept any governmental regulation to a greater extent than was necessary. That has been a slow process. It started in the beginning by a denial of the propriety and justice of any regulation, but step by step the soundness of the public view that there should be governmental regulation has been more and more accepted. Railroad managers have changed; a generation has come and gone since this thing was started 29 years ago. Men have come into railroad management who were separated from the first and early conceptions of these matters, and they appreciate that there must be, and I think I may say for them generally, that there ought to be a system of governmental regulation; but they believe that it ought to be a philosophical system; that it ought not to present complexities which will repel investors; that it ought to be helpful; that it ought to provide the necessary protection to the instrumentality of commerce which will make it always efficient for the service which is required of it; and they can not see now, after debating the logic of those concessions, and after the adoption of those views, they can not see where the stopping point is, or if all those views are sound where they can stop; and insist on the wisdom and advantage of national regulation alone, and still leave the actual corporate control of these instrumentalities in the hands of an authority other than the Nation. It seems that the power to control the national entity itself must necessarily follow the power of regulation by the Nation itself. The logic of that view has been now accepted by the railroad managers of the country, with the rare exceptions to which I have alluded.

The CHAIRMAN. Mr. Thom, there are two forms of meeting this requirement for national organization to which you refer. One is the creation, under national law, of national corporations that will own the physical property of the railroads in the various States, and the other is the creation of holding companies under national law which will own the stocks of corporations organized under the laws of and operating in the various States. The latter, you will observe has what might be regarded as an advantage—that the entity of the State corporations is maintained, whilst the union of these corpora-

tions is effected under the national law through a holding company. Will you please state your views as to the comparative advantages of these two systems?

Mr. THOM. We think that there should be a nationally created corporation which shall own the physical property. We do not see any disadvantage in that whatever. Of course the parties in interest in respect to it are three: One is the State in its corporate capacity, the second is the security holders of the State corporations, and the third is the general public. The State in reality, in its corporate capacity, has no interest; its interest as a State is fully protected by having the Nation, which represents that State as all the others, create a system which shall be fair as between the two. The logic and soundness of the view that no State can with propriety adhere to the view that it must hold on to some advantage for itself over its sister State in these matters of commerce which affect both is making tremendous progress in this country. For example, every railroad that runs into the South—every large system that runs into the South and goes from this section of the country is an incorporation of the State of Virginia. The Atlantic Coast Line, the Seaboard Air Line, the Southern, the Norfolk & Western, and the Chesapeake & Ohio are all Virginia corporations. The only three roads in the South that I know of, of any importance, which are not Virginia corporations, are the Louisville & Nashville, the Central of Georgia, and the Illinois Central. There are five of the great railroad systems of the South that are incorporated by the State of Virginia.

Now, everybody sees that no individual views of the State of Virginia ought to be imposed on North Carolina or Tennessee, or on any of the other Southern States. The State policy which might put a limitation on one of those five systems in Virginia of course would naturally be resented by the other States if they did not agree with that policy; and the question ought not to be left—the public is beginning to see that the power ought not to be left in the State of Virginia to put a limitation on the charter of those five companies, which will be felt throughout the system, but that there ought to be a power that represents every one of those States—Georgia and Alabama and Tennessee, as well as Virginia—that would pass on those questions of charter limitation; so that the view of the power of the State to put limitations or to give privileges is being rejected by the public thought of this country, for the reason that there you come across what Chief Justice Marshall so many years ago said, that while Virginia might be willing to do that, the other States are not willing for it to do it. They want those questions of vital commercial interest to themselves passed on by a body that is not simply one of the States, but that represents all of the States; so that we can eliminate the interests of the State, as a State, in that matter.

Now, as to the interest of the stockholders and the creditors, it is our belief that there is a simple constitutional proposition underlying their rights. When they made their contract rights with a corporation chartered to do interstate and foreign business, they acquired their contract rights subject to the full exercise in the future by the Federal Government of the power to regulate commerce. In the nature of things, there could not be a contract right acquired by one of the investors in these railroads chartered to do an interstate busi-

ness which would limit the power of the Federal Government to fully regulate that instrumentality. The State itself had created it to do this interstate business; the people that had gone in as stockholders or creditors had gone in to a concern organized, in the first instance, to do an interstate business. They found in the Constitution of the United States a provision giving to the Federal Government the full power to regulate interstate business—interstate commerce. They then took their rights subject to the future exercise by Congress of that power to regulate commerce to the fullest extent that Congress might feel that the public interest might demand. You gentlemen will remember that that question has been passed on already by the Supreme Court of the United States. Years ago there was a man who was injured in a railroad wreck on the Louisville & Nashville road, giving him a legitimate claim against that company for damages. He settled that claim by assuming a contract relationship with the Louisville & Nashville. He got a pass for life from the Louisville & Nashville, in consideration of this claim that he had against the road. That was legitimate; that was lawful at the time it was done. There was nothing in the laws of Congress to prevent it when that contract was made; but as years came along Congress undertook to regulate how people could pass on a railroad—the terms on which they must deal with the railroad; that there must be absolute equality, and that nothing should be taken except money for passage on a railroad, and that case was carried up to the Supreme Court, and the Supreme Court there said that this man took his contract right with the road subject to the future exercise by Congress, to the fullest extent, of the right to regulate commerce and that his rights under that contract must fall, because Congress had seen fit to regulate commerce to an extent greater than it had undertaken to do at the time that contract right was created.

Now, we believe that these stockholders' rights and these bondholders' rights do not stand on any higher basis. We believe that when the bondholder lent his money to a railroad engaged in interstate commerce, and when the stockholder made his contribution to the capital of railroads engaged in interstate commerce, that ex necessitati they both did that subject to any legitimate regulation of commerce in the future which Congress might undertake. Therefore, we ask ourselves the question whether a system of national incorporation is the legitimate exercise by Congress of the power to regulate commerce. We think it is. We think that everywhere it appears in the authorities that it is. If we are right in thinking that Congress, under the power to regulate commerce, may adopt a national incorporation law, then these stockholders and bondholders took their rights in the corporation subject to that possible exercise in the future, and they have no complaint; they have no case for compensation in the event that Congress does exercise that power of regulating commerce to the extent of adopting a national system of incorporation.

So that our view is that Congress can pass a law forbidding any railroad company, after a date to be fixed by Congress, to engage in interstate and foreign commerce unless they have taken out a license under the National Government, or unless they have taken out a charter under the National Government, and when that is done the stockholders of that corporation may meet and by a majority—

not by a unanimous but by a majority vote—bind everybody in it, bind the minority to a system of national incorporation, because that is one of the purposes which they went into business for, to do an interstate-commerce business.

That is the other method of doing it, and we think, therefore, that there will be no difficulty about the matter, and that there will be no right on the part of anybody to object. But we do think this: We think that every right that has attached in that property, whether it be the right of creditor or right of a stockholder, must be preserved against the assets that pass into the national incorporation; that they must stand when they get there just as they stood in the corporation of the State. It is not a legitimate method of regulation to try their rights interstice, or their rights as to the corpus of the property, but as to the management of the property, as to the form in which it stands; that that is a matter which is fully within the regulating power of Congress, and that when Congress preserves their contract rights in regard to the assets of the company they have guarded; that is, Congress has guarded—every constitutional right of the creditor or the security holder, and still retains unimpaired its power to regulate and direct the instrument of interstate commerce in its business in commercial operation.

Now, the other class of people to whom I referred as having an interest is the public, and the problem is merely before you gentlemen to determine whether the public interest requires this action. You may say it does, or you may say that it does not. That is for you to say. But if you say it does, we are absolutely convinced that that is no constitutional abstacle in your way; that neither the State nor any of the security holders occupy any position that can in any way impede you in the full exercise of your power of regulating commerce.

The CHAIRMAN. Do you think that the consent of the State is required as to the acquisition and absorption of the property and powers and functions of a State corporation by a national incorporation organized under the national law?

Mr. THOM. No, sir. You do not transfer to the national incorporation any franchise granted by the State. You might confer upon the State corporation—I mean upon the national corporation—every franchise that the State has conferred upon it, but it will be your gift then and not the State's. The source of its franchise then is Congress, not the State. You would only acquire the physical property. You acquire none of the rights granted by the States, but acquire the physical property.

It is inconceivable that Congress can be charged with the duty of regulating and assuring that there shall be such a thing as interstate commerce unless it can enter upon the territory of the State and acquire the means of doing it, and it has been held that Congress can do that through the exercise of the right of eminent domain. The Supreme Court has decided that, even if the property did not belong to the railroads, even if it belonged to a citizen of the State, Congress can go into one of the courts of that State and can have the property of an individual citizen condemned in order to create a system of interstate commerce.

Now, when the whole property has gone into an individual—I mean gone into an individual company—and becomes the property of a State corporation no longer, the property of an individual in

the State, and was acquired for the purpose of devoting it to interstate commerce and subject to regulation of Congress, then, of course, there can be no doubt of the power to transfer it to a better system of regulation and to a more extensive system of regulation than that which existed at the time that property was acquired.

The CHAIRMAN. I take it, then, that you think a system of holding companies, organized under national law, would not meet the requirements of the situation?

Mr. THOM. I do not think it would at all. I feel that that would lead to some diversified situation of conflicting, or accumulated necessity for corporate action which will retain all the complexities of the present situation, and that the whole thing can be simplified and unified by making one national corporation of the railroad system and letting that corporation own the physical property and be charged with the direct obligation to the country for their proper operation.

The CHAIRMAN. Assuming that the national system of incorporation of railroads is adopted, what, in your judgment, would be the application of the police laws of the various States to railroads owned by such national corporations?

For instance, with reference to the gradings and crossings of railroads, with reference to the use of separate cars in the Southern States by the blacks—would the local police laws apply to such national instrumentalities?

Mr. THOM. My view—or perhaps our view, I may say—is that the police powers of the State ought to be affected to the least possible extent consistent with an efficient regulation of commerce. The people of this country value local government. It is a natural and it is a proper view. Men have always wanted their government near enough to their homes to let the government understand the spirit of their civilization. Those police powers ought not to be affected in any way except under the compulsion of finding that any one police power is inconsistent with the national object which Congress has in view.

Now, take this matter of taxation. Of course, if there were Government ownership there should be nothing but National Government ownership. There has been no suggestion anywhere that the States should begin and own these roads, but if the Government ownership should be a general concurrence in the view that the only governmental agency at all is the United States, of course that is a recognition of the fundamental of interstate commerce; that it has national aspects and necessities which can not be dealt with locally. No State's rights man, no matter how deeply imbued he may be with that governmental philosophy, would for an instant think that any State should own these agencies of national commerce. All must concede that the United States Government must own them, if any Government owns them, and that that conclusion comes out of the very nature of the business itself. It is national in its aspects. I say that all the contention for Government ownership, therefore, recognizes the fundamentals of the plea that we are making for national regulation.

Now, if there was that system of national ownership of course that would take away from the States the right of taxation. It seems

to us that in any system of national incorporation there should be a provision leaving to the States the right to tax all railroad property within their respective borders to the full extent that it would tax any other property there. I suppose the right of taxation is in the nature of a police power. Then we go to the other police powers. We think that Congress ought to start a system of regulation by putting on the State side of the line of the division between the national authority and State authority all those matters where there is a possibility, or I should say a probability, of the power being exercised in a way not to interfere with the national purpose of regulating commerce.

The philosophy of this all would be, of course, to take this matter of grade crossings, and matters of that kind, as possibly affecting in a large way the instrumentality of commerce, and therefore necessary to be controlled by the National Government. But we do not think that that ought to be taken for granted. We think that ought to be left to the State until such time as it is demonstrated it interferes with the general policies Congress has in view. We think that ought to be left to the State.

We think also, in the matter to which you specially alluded, the matter of separate costs and separate rates, where any one section of the country there are susceptibilities on that subject which do not exist in others, we think those matters ought to be respected, and where there is any valid law of the State controlling that matter we think that law ought to be left undisturbed by an act of Congress. There ought to be, in our judgment, the powers taken over by Congress which Congress can now see are essential to the successful operation of interstate commerce, and of a complete guarantee to the public of the efficiency of their commercial facilities. But nothing else, no other matter—I will not say right—but no other matter ought to be disturbed until it shall come to appear that the power which is left where it is now is being exercised in a way to affect adversely the public interests.

The matter of State rates I have attempted to show, you is a matter which now is undoubtedly burdening the various States. The action of one State is undoubtedly burdening the commerce of another State and is undoubtedly burdening interstate commerce. We think that undoubtedly ought to be taken hold of, because you can not divide these instrumentalities and let some essential function of them be regulated by one system of government, and other essential functions of them be regulated by other systems of government, and at the same time preserve the equality that ought to exist between them and ought to exist between the commercial affairs of the country.

We think also there ought to be taken such matters as the equipment of trains which run unbroken across the continent, or half across the continent. We think there ought to be no necessity for stopping at State lines and changing the equipment; but, broadly speaking, our contention is that wherever there is a matter, whether even admittedly within the power of Congress, which can be, and probably will be, exercised by the States, without a disadvantage to the instrument of interstate commerce and its efficiency in the public service, it ought to be left to the States.

The CHAIRMAN. Upon the subject of taxation you referred to the fact that if the roads were owned by the Government there would be no taxation, of course, and that if they are to be nationally incorporated we will all agree they must, of course, contribute to the expenses of the State and municipal governments and to the National Government. Do you find that there is much variance in the laws of the various States with reference to the taxation of railroads?

Mr. THOM. Yes; we find a great difference, and a great difference in the tax burden of the States.

The CHAIRMAN. Do you find that variance as to law and variance as to the amount of burden imposes any difficulty as to the negotiation of securities at low rates of interest?

Mr. THOM. I am not able to say that I do. I think there are great inequalities between the various States with respect to the imposition of the tax burdens; that thereby the State that imposes the greatest burden is taking an undue part of the revenues of the company for its own purposes and is putting—theoretically at least, and it would all depend on the amount of the tax—a burden on the other States. That money has got to be made up somewhere. That is one of the things that must be taken into consideration when rates are fixed, and the State that imposes the largest tax, in proportion to some other State, to that extent increases that burden and adds to the aggregate expense.

Notwithstanding that, in striking a balance between the public interest, on the one hand, and having a consistent and efficient system of transportation, necessary at all times for its purposes, and the interest of the public not to see sources of State revenue impaired unnecessarily, I believe that for the present at least—and I think it will prove to be so for all the future—that this power of taxation should be left with the States to be imposed on this class of property in the same way it imposes and to the same extent it imposes taxation on other property belonging to the people in that State.

Great debts have grown up in municipalities and in States, based upon all the assets in the State and among them railroad assets. I do not believe that it would be accepted as a fair consideration for those conditions if Congress were just to take away from the States this power of taxation on any very considerable part of the assets. No matter if it had the power, I do not believe that it would be accepted as a fair consideration for those local conditions for Congress to do that.

The CHAIRMAN. You are aware, as to national-bank corporations, the national law fixed a rule for their taxation, are you not?

Mr. THOM. Yes, sir.

The CHAIRMAN. In the incorporation bill which I framed I inserted a provision regarding taxation providing that the stocks and bonds of corporations should be exempt from taxation as being merely interests in the property of the corporation, but that the physical property of the corporation itself within the boundaries of a State should be assessed and taxed under the laws of that State. What do you think of such a rule of taxation?

Mr. THOM. My own belief in the system of taxation is that you ought to tax the property. Now, the stock in a corporation is nothing more than the certificate of the ownership of the holder in the corporation. Here is a corporation with 100 shares of stock. A person

owns 1 share of that stock. That means that he owns a one-hundredth interest in that corporation. Now, I do not see how that differs from the man who holds a deed to his farm. The title of the owner of the farm is his deed. To tax both the farm and the deed would be double taxation. To tax both the property of the railroad and the stock is double taxation for the reason that I have just narrated. The certificate of stock stands in the place of the deed of the owner of the farm as a muniment of his title. When we get to taxation of bonds, we get into a very difficult situation; not difficult in itself, having no inherent qualities of difficulty, but difficult because there has grown up in this country such an immense accumulation of public debt that you have got to look everywhere for sources of taxation, and to withdraw all of a sudden the entire bonded indebtedness of the country as a source of taxation would greatly disturb an intensely practical situation. I think that ought to be done myself on any legitimate basis, but I do not think that is a practical thing to do. I do not think it is possible to do it.

The CHAIRMAN. Does not the bond also represent an interest in the property just as the stock does?

Mr. THOM. In reality it is a debt that the property owes. It is not a part of the title of the property (secured by a mortgage, it is true), but it is a lien and is not an interest in it. It is secured by the property, but not an interest in it.

The CHAIRMAN. If you tax the full value of the property, or assess, rather, the full value of the property, and then assess the full value of the bonds and the stocks, is not that double taxation?

Mr. THOM. Yes, sir; but that, of course, assumes, as it is generally true, that the proceeds of the bond had gone into the property and the stock.

The CHAIRMAN. You dwelt upon the importance, in the public interest, of so regulating our railway systems as to enable them always to obtain sufficient capital for development and extensions at reasonable rates of interest. Now, from that point of view, does not the taxing system of a particular State affect the negotiability of bonds and stocks—

Mr. THOM. Undoubtedly.

The CHAIRMAN. At reasonable rates of interest?

Mr. THOM. Undoubtedly. Before I came to Washington, in the community where I lived in Virginia the rate of taxation on what is known as intangible property was so high that there was not anybody in the city that could afford to own a bond. You could get a bond then, when I came here, at a low rate—it was a period of low interest—and it was generally the case that bonds could be issued at 4 per cent, but the rate of taxation on that bond was over 2. So, of course, there could not be anything like the ownership of a bond there, and you have got there a real difficulty.

The CHAIRMAN. The investing public was limited?

Mr. THOM. The whole credit of that community was excluded from the purchase of bonds. There is not any way of getting any credit in that community for the support of the bond issue of a railroad, but that same State did this in its recent constitution—there is a provision in the constitution of Virginia that where the property of a company is in that State and chartered by that State; that is,

taxed, that the stock shall not be taxed, and that resulted in a great deal of the funds of the dependent people, children, cestui que trusts of various sorts, being put in the stocks of the Virginia railroads, and the event showed that a good many of them stopped paying dividends pretty soon, and all that class were stranded, so far as any income of that investment went.

The CHAIRMAN. What was the case with reference to bonds in Virginia?

Mr. THOM. There is no such provision in the constitution of Virginia in respect to bonds.

The CHAIRMAN. Then, take a 4 per cent bond, subject to a tax, you say, in Virginia of 2 per cent?

Mr. THOM. They have changed that now somewhat. That was the fact, then?

The CHAIRMAN. Would such bonds, subject to such a tax, find a market in the State of Virginia?

Mr. THOM. No; not unless they were good dodgers.

The CHAIRMAN. How would you view them with a view to securing in the public interest money for the stocks and bonds of corporations at the lowest rate of interest or dividends, an exemption of stock and bond issues of railways from taxation?

Mr. THOM. I believe it would be greatly to the public interest, but whether the public is ready for that or not I do not know; but I would think it was immensely in the public interest.

The CHAIRMAN. Would you question the power of the National Government to do that?

Mr. THOM. Not at all.

The CHAIRMAN. Assuming that in the gradual development of the railway systems of the country we will arrive ultimately at Government ownership, would you regard the national incorporation of railways under great systems as a step facilitating that result?

Mr. THOM. Recent events have very largely increased among railroad managers the advocacy of Government ownership. I suppose I am an altruist in a great many ways, and my view as to the effect upon our national institutions is so pronounced that I would deplore the idea of Government ownership if we are to have free institutions in this country.

Mr. ADAMSON. I do not believe Mr. Thom exactly understood the question of the chairman. I understood the question to be whether Federal incorporation would lead to Government ownership.

Mr. THOM. I am coming to that.

Mr. ADAMSON. Whether it would facilitate it.

Mr. THOM. I heard the question. Federal incorporation would not in any sense be an impediment in carrying out any plan of national ownership. The method of acquiring these properties, however, by the Government is so easy in case it has got the money to pay for them, that I do not think it is necessary to facilitate it by a system of Federal incorporation. My views in regard to Federal incorporation are in no way influenced by the idea that it would facilitate public ownership, or that it is desirable to facilitate public ownership, and on that I am speaking my view, not the views of the railroads, because some of the railroads are getting very anxious for Government ownership.

The CHAIRMAN. Regarding the dividends of corporations, I understood you to say that the general consensus of railway men was that shares could be negotiated at par and held at par if provision were made for 6 per cent dividend and 3 per cent for a surplus, applicable to lean years, to extensions, and development of the roads, etc. Would you deem it wise to put in the incorporation act a limitation of dividends, or a provision for dividends of not exceeding 6 per cent, with a provision for this surplus?

Mr. THOM. Before answering that question, may I add something to my previous answer in order to avoid misunderstanding?

The CHAIRMAN. Certainly.

Mr. THOM. I do not want to be understood in anything I have said as indicating that the railroad view is in favor of Government ownership. It is not. I merely meant to say that there were some people who had come to that view, therefore I preferred merely to express my own views instead of undertaking to express a great many people's views. I think the view of the railroads is adverse to that.

Now, as to the question which you present, Mr. Chairman, in regard to the limit on dividends. I do not think you can limit the maximum of dividends unless you limit the minimum of dividends. If the Government is prepared to guarantee dividends on stocks of a certain amount, then I think you can limit the maximum, but if you are going to leave open the possibility of losses of all dividends, I think you are going to withdraw a very great attraction from this class of investment, if you limit the dividends that may be legitimately earned. I can not conceive of an inducement to anybody to put in money in an enterprise which leaves him free to lose everything and says that he can not gain any more than a certain percentage in that, when that percentage is the thing that he can get much more readily from some other source of investment, and where he may get a great deal more. I would rather loan money on a farm mortgage at 6 per cent than to put money in a railroad where I might lose everything and could never get more than 6 per cent.

I referred a day or two ago to one class of investors which modern conditions have repelled from railroad investment, and that is the class that is willing to risk its investment for the sake of a chance of handsome returns. You must realize that that is the class of people that built the railroads of this country. Whatever may be the criticism on what is called watered stock and high finance, and all that sort of thing, the methods of the man that was willing to adventure his means has given to the American people 250,000 miles of railroad.

The way the railroads of this country were built was this: A certain number of bonds were issued to the people who built a railroad, and with them was given a bonus of stock. Now, it was supposed that those bonds, which represented the input of money, would represent the ordinary commercial return. The bonus of stock represented the hope of the projectors; it represented what they might anticipate that if their enterprise was successful would come to them in unusual returns. That is what is known as watered stock. That was the bait, that was the attraction which aroused the individuals in this country and abroad to build American railways, and notwithstanding all of the criticism that we hear made of that we must realize that out of it has come our commercial opportunities. You can never take away your railroads. They are here; they are the servants of the people.

and you got them in that way and got them under laws permitting that.

Now, if you are not only going into that question of feeling bitterly denunciatory of that system but are also going to say that no man who puts his money in a railroad hereafter can expect to earn more than 6 per cent, and he may lose it all, you are going to separate from the production the facilities of commerce all the class of men who want to make an investment in the spirit of adventure and take the chance of getting their handsome return. You will cut down very largely your investing public.

And if I am right in thinking that the chief interest of the American public is in facilities, I think a limitation of dividends would have a very disastrous effect upon the assurance of such facilities. Now, we all know that there are very few railroads that pay more than the figure you have mentioned, Mr. Chairman—6 per cent—but there is no legal inhibition to its being more; and the adoption of a governmental policy of limiting the amount of dividend to what can be gotten almost on any investment without guaranteeing a return of at least a certain amount would, in my judgment, make the railroad investment field a very unattractive one.

The CHAIRMAN. Mr. Thom, in your opening statement you referred to the growing indisposition of the public to invest in railway securities, either bonds or shares. Was that manifested before the commencement of the European war?

Mr. THOM. I believe, Mr. Chairman—I am not able to verify this statement I am about to make—I believe when you look at the course of investments of savings banks that you will find a decline in their investments in railroad bonds to begin with the realization that the people were made to have—I mean the investment public was made to have—by the first decision against an advance in rates, that there was no longer any control on the part of the investors of the revenues of the company. I think that the realization, which has now become general on the part of the public, that there is no control in the investor of how much his revenues are going to be or how much the expenses are going to be has been the thing that has alienated the public from railroad investment. I would say that decision I refer to was before the European war. Certainly, we find it the case that there is a pronounced indisposition to invest in railroad securities; and when we study the situation we find the conditions all the time approaching the exhaustion of the margin between the existing liens and the sum of the assets of the company; so that the American people are confronted with the consideration of that margin. You are not interested in whether anybody wants to buy a bond on the market, the bond of a railroad, or whether they want to buy a bond of a steel company, unless it means something else, but you are interested, and profoundly interested, in watching that margin between the amount of the liens on a property, evidenced by fixed charges, and the value of the assets, and that is seen gradually but surely decreasing, and what is left all the time measures the ability of the carriers to keep on producing facilities that are required by Congress. You must be profoundly interested in knowing that progress. That is what is going on to-day.

The CHAIRMAN. But do you not think that the throwing of foreign-held shares and bonds of American railway companies upon

our markets, caused by the European war, has absorbed the surplus money of the country available for investment, to the exclusion of the capacity to absorb new securities? In other words, have not the old securities of these companies held abroad taken the place in the markets of the United States for investment that might have been taken by new securities if it had not been for that war?

Mr. THOM. Undoubtedly that has had a very marked tendency and a very large influence in producing the conditions, because just in so far as prior liens and the most desirable classes of stock are offered the American public they, of course, are disinclined to take inferior liens, which would mean the new offerings, and they have preferred the best classes of securities; but that has not absorbed the funds in America that are available for investment. We do not see any confinement of present investments to railroad securities. On the contrary, there is abundant capital in this country—overflowing capital in this country—to seek another avenue to invest. Take the steel companies, the copper companies, municipalities of various classes—securities that might be mentioned—and there are untold millions pouring into them to-day. Cotton, 25 cents a pound; copper, 35 cents a pound; steel, many dollars a ton advance; and that is where the American investment is going. You see it every day.

The CHAIRMAN. You are aware that this country has been compelled to absorb nearly \$3,000,000,000 worth of American railroad securities since the European war?

Mr. THOM. And to that extent the forces that you have alluded to have been operating; but I mean to say that there are tremendous classes of investment outside of railroads that are now being preferred by the American public. Take these copper stocks; they pay you about 12 per cent; and steel stock way up—the returns way up above anything you can get from any railroads, and they can advance the prices when they see fit. The railroads can not advance their prices.

The CHAIRMAN. Mr. Thom, I want to question you regarding the traffic divisions of the United States. How many are there?

Mr. THOM. There is the southern classification—

The CHAIRMAN. What are they?

Mr. THOM. Southern classification territory, trunk-line classification territory, Central Freight Association territory, and western classification territory. There are four.

The CHAIRMAN. Now, what areas do those embrace?

Mr. THOM. Well, the southern classification territory—I will have to be, maybe, a little inaccurate in this, but I can tell it generally—the southern classification territory covers the Southeast, the region between the Potomac and the Mississippi Rivers and south of the Ohio.

The trunk-line classification territory covers the section of the country north of the Potomac River and east of a line drawn through Chicago.

The central freight—

Senator BRANDEGEE. Is not that called official classification sometimes?

Mr. THOM. Sometimes called official classification.

Central Freight Association territory covers the section between this line that I have alluded to, passing through Chicago, and the Missis-

Mississippi River. The western classification territory is west of the Mississippi River. That is my general impression. I would like to get Mr. Rich to correct me, if I am wrong about that. I would add to what I have said that what is known as official classification territory takes in trunk-line association territory and the central freight association territory. By that I know you gentlemen understand that freights, subject to freight commodities and the classes, are differently classified in different sections of the country, one in the southern classification territory, another in the official classification territory, and the third in the western classification territory.

The CHAIRMAN. Would it be your idea to have a regional commission in each one of these traffic areas?

Mr. THOM. More than that. I think Congress should study the transportation systems of the country and should make more than one for each of these sections, but that the division should be on lines of transportation rather than geographically. For example, I should suppose—just for example I suppose that a region could probably be made out of the northern transcontinental lines running from the Mississippi River to the Pacific coast, such as the Northern Pacific, and the Great Northern, the Burlington, and some of those roads, and that it would be appropriate to have another classification territory between that—I mean another region between the southern boundaries of that and the Gulf of Mexico, and perhaps more still. I think whatever is necessary in order to bring the administration of this system into local territory ought to be afforded in the division of the country into regions.

The CHAIRMAN. Have the railroad executives or managers any definite suggestion to make regarding the boundaries of these traffic areas or regions involved?

Mr. THOM. They have not any definite suggestion to make at this time. Of course, their opinion on the subject would be open to use by your committee at any time you may desire it. They have not formulated any plan.

The CHAIRMAN. Mr. Adamson, do you desire to ask any questions?

Mr. ADAMSON. I would like to have the hour after 1 o'clock. You are doing so well that I think you could occupy the balance of that time.

The CHAIRMAN. I am through, so far as I am concerned. I would like, when questions are handed around the committee again, to question Mr. Thom after he has examined the material that I submitted this morning.

Mr. ADAMSON. Is it your purpose to adjourn at 1 o'clock or half past 1?

The CHAIRMAN. That is for the pleasure of the committee. Would you prefer to wait?

Mr. ADAMSON. If I can think of anything appropriate to ask Mr. Thom, I would like perhaps to complete my interrogatories at one sitting. However, I will go on now, if it is desired.

The CHAIRMAN. Shall we pass you for the present?

Mr. ADAMSON. If you choose.

The CHAIRMAN. You may proceed now, if you wish, or if you prefer I will pass to the next member of the committee. The next would be Senator Robinson.

Senator ROBINSON. I do not care to ask any questions now.

Mr. ADAMSON. I will not let you waste time. I will go on if no other gentleman wants to proceed, or if you are not ready to adjourn.

The CHAIRMAN. You may consult your own pleasure, Mr. Adamson.

Mr. ADAMSON. I never have any pleasure. I am for the people. If I get no pleasure out of that, I waive it. Mr. Thom, you have several times alluded to the Constitution in your discourse, which is a kind of novelty of late days for that to be alluded to.

Mr. THOM. Oh, yes.

Mr. ADAMSON. I presume the paragraph to which you allude is in the enumeration of the powers of Congress, in which I find, "To regulate commerce with foreign nations and among the several States and the Indian tribes."

Mr. THOM. Yes, sir.

Mr. ADAMSON. Can you tell me what particular business and things and movements that refers to?

Mr. THOM. I did not hear you, Judge.

Mr. ADAMSON. What particular persons and things and instrumentalities does that refer to?

Mr. THOM. I think it refers to all instrumentalities of interstate commerce.

Mr. ADAMSON. Does it not refer to anybody who trades across a line, or converses across a line or transfers people and property across a line, or does any business or has any conversation across a State line?

Mr. THOM. In so far as relates to these cross-State line transactions; yes, sir.

Mr. ADAMSON. That is what we are talking about?

Mr. THOM. Yes, sir.

Mr. ADAMSON. There are two kinds of people who do business, natural and artificial.

Mr. THOM. Yes, sir.

Mr. ADAMSON. You understand that this section of the Constitution is limited in its operation by any particular incident to the birth of a man or the organization of a local corporation?

Mr. THOM. Not at all.

Mr. ADAMSON. Do you not understand that regardless of whom a man's father and mother were, or what State charters the corporation, or what its terms and conditions are, that under this authority of the Constitution, when Congress acts it superadds or displaces anything in conflict with it and absolutely controls the persons, natural or artificial?

Mr. THOM. It displaces whatever is in conflict with it and absolutely controls the subject with which it deals.

Mr. ADAMSON. Then that section of the Constitution, if Congress should do its duty, seems plainly to control every person, natural or artificial, engaged in interstate commerce?

Mr. THOM. In so far as they are engaged in interstate commerce.

Mr. ADAMSON. Well, that is what we are talking about?

Mr. THOM. Yes, sir.

Mr. ADAMSON. Well, you have alluded to the police powers of the States. The police powers are those which it would be unconstitutional for Congress to interfere with, are they not?

Mr. THOM. No, sir; the police powers can be police powers, and Congress might interfere with them if it chose to exercise full power under that clause that you have just read.

Mr. ADAMSON. If Congress does not see proper to do so, it may leave to the States any operation which the States desire to take, but when Congress does act as to the matters affecting interstate commerce, the action of Congress supplants the other regulations entirely.

Mr. THOM. Well, there are some aspects of interstate commerce that the State can not do anything about at all even if Congress is silent. There are others where until Congress speaks the State may occupy the field, but when Congress speaks as to that class, any provision of the State law with respect to it disappears.

Mr. ADAMSON. Are there any things done by a State within its own borders not affecting outsiders, or outside transactions, that it would be unconstitutional for Congress to prohibit or interfere with?

Mr. THOM. Is there anything which a State has power to do?

Mr. ADAMSON. Can do within its own borders, not affecting outsiders or outside territory, that Congress could not constitutionally prohibit or forbid?

Mr. THOM. If I understand your question, I think there are a great many subjects, or things that a State may do which Congress can not at all interfere with.

Mr. ADAMSON. Well, if that be true, is a charter for a Federal corporation any higher, or more binding than an act of Congress direct?

Mr. THOM. Not at all.

Mr. ADAMSON. If a thing be unconstitutional, if enacted by an act of Congress, would it not be alike unconstitutional if attempted through the indirect method of a Federal corporation which is the creature of that act of Congress?

Mr. THOM. Undoubtedly.

Mr. ADAMSON. Well, I will pass to another proposition. I am satisfied with that.

Now, you have described eloquently and ably and justly the rights which the States acquire which they do not already have, in return for those which were surrendered in the formation of the Constitution. Those rights, as I understand you—and I agree with you as I understand it myself—are the rights of any person in a State to trade, travel, and traffic in any other State in the United States.

Mr. THOM. You mean that is one of them?

Mr. ADAMSON. I say that is one of them. You beautifully and eloquently describe that.

Mr. THOM. That is one of them.

Mr. ADAMSON. My point is, as I understood you, it is a State right acquired at that time—they may have had some of them before—but it is a State right to trade, converse, or travel anywhere in the area of the United States?

Mr. THOM. Absolutely, freely.

Mr. ADAMSON. Well, that being true, the right of the local communities, which are commonly called States, to charter corporations which may do business anywhere in the States, is a State matter and not a national right, is it not?

Mr. THOM. No, sir; I do not think so.

Mr. ADAMSON. You do not think it is a State right?

Mr. THOM. It is a right to do that until Congress shall act on the subject, if that is what you mean.

Mr. ADAMSON. But you say that one of the rights which they acquired was the right to converse and travel anywhere in the United States?

Mr. THOM. Yes, sir.

Mr. ADAMSON. Now, you say that right which they acquire is limited by the pleasure of Congress in the future?

Mr. THOM. No, sir; I think you misunderstood me. I said that they have a right to travel and to trade under such regulations as Congress may prescribe under the clause I have mentioned.

Mr. ADAMSON. Then your beautiful argument about the State rights acquired under the Constitution loses some of its value and force, does it not?

Mr. THOM. Not to my mind. My argument was that each State acquired the right by entering the Union to have its trade free from any embarrassment and from any regulation except as prescribed by the impartial authority of Congress, which represents all the States.

Mr. ADAMSON. I understand that, but it is free so far as the action of any other State is concerned?

Mr. THOM. It ought to be, but is not now.

Mr. ADAMSON. It has the right to trade and traffic in any State, but it is subject to regulation by Congress?

Mr. THOM. Undoubtedly.

Mr. ADAMSON. That is, reasonable regulation?

Mr. THOM. Undoubtedly.

Mr. ADAMSON. What is that right? Is that a State right or a national right?

Mr. THOM. I think it is the right of a State to invoke at any time it pleases—

Mr. ADAMSON. Then it is not a right—

Mr. THOM. Will you please let me finish my answer to your question—at any time its pleases the benefit of its constitutional protection. Now, suppose that the State of Georgia were invaded. I think it is the right of the State of Georgia to ask the United States to send its armies there and repel that invasion. I think if the National Government should undertake to say that every other State in the Union should have a post-office system but that it should not extend to Georgia that Georgia would have the right to have the post-office system extended. I think if the State of Alabama were to attempt to do something prejudicial to Georgia's commerce—the right to trade in Alabama—that Georgia would have a right to invoke the clause of the Constitution which gives the entire power of regulating commerce to Congress and not to the State of Alabama.

Mr. ADAMSON. Well, whether any State ever enjoys the right to efficiently acquire it or not, it did acquire State rights.

Mr. THOM. I think it acquired an immense State right. I do not think they would have gone into the Union unless they thought they would acquire State rights.

Mr. ADAMSON. If that be true, and I think it is, then the conversation that you and Secretary Olney indulged in the other day, when you read his letter, is a little inaccurate to denominate these present lines of traffic national railroads, is it not?

Mr. THOM. That was his nomenclature, which he explained was a short way of expressing an interstate and foreign railroad, but he did not want to repeat that every time. He said he would call them national.

Mr. ADAMSON. Transition seems to be easy sometimes, the use of one term or the other, according to your doctrine and mine; it always leads the other way.

Mr. THOM. Judge, I do not feel any hostility to the National Government. I believe a nation occupies a ground of usefulness to the State which could not be occupied in any other way. I believe there should be no jealousy toward those powers. I believe they are just as important to Virginia, my State, and Georgia, your State, in the field which the Nation occupies, as the rights reserved by those States are.

Mr. ADAMSON. It has become fashionable, Mr. Thom, when the Constitution is talked about, for that term to be given to it. If a man talks about local authority and local rights, some men sneer and the States talk about State rights. If he gets to talking about the Constitution as being dual, and wants the Government, in all its grandness and greatness and national power, to do what the Constitution says for it to do, and the States in their inherent right acquire rights to do the part the Constitution says for them to do, people come and talk about hostility, the one to the other. All lawyers know that this Government is dual, that part of its functions are to be discharged by Congress—the general public—and the other is by the States, and there is no use of anybody—and we had just as well let that go out of fashion—to talk about one being hostile to the other. What we want to do either here or elsewhere is to do something that is constitutional.

Mr. THOM. Undoubtedly, and I do not think there ought to be any jealousy on the part of the National Congress toward what are commonly known as the rights of States. They are just as sacred, they are just as important, and they are absolutely essential to the due balance of powers in our system of democratic government. But I do not think there is any danger of the National Government trying to invade any rights of States wherever there has been an extension of national power within the last 30 years. My belief is that the demand for it has come up from the States, from localities.

Mr. ADAMSON. Mr. Thom, the question is now mooted. For a long time it was regarded as certain that within the confines of a State the State authority could absolutely fix rates and practices between points within that State, having no relation, or not traveling or being shipped into any other State. I understand it is now contended that if the rates and practices are favorable, or less favorable than similar rates and practices in a neighboring State, that they may be held to be a violation of interstate commerce and may be regulated.

Mr. THOM. I think the line of demarcation is this—

Mr. ADAMSON. I am not going to require you to state what your or my opinion is about it. What I was getting at is this, regardless of what the truth of it is, regardless of which is right, it is mooted, and I want to see if I can develop in your legal opinion, for which I have great admiration, the principal change by national incorporation if two lines of road within your State parallel each other, as between Richmond and Danville or between Norfolk and Danville,

and one is charged by Federal authority and one by State authority as to the things which they should do between those points, both in the same State, as to the rates and practices and the treatment of the public—I want to know if they both would not be required to act just alike, regardless of where the charter came from?

Mr. THOM. Undoubtedly. Now, I want, if you will permit me, to say that the line of demarcation between what the Nation—or the United States, if the word “Nation” is not liked—what the United States ought to do in the matter of regulating commerce, and what it ought not to do, is determined by whether or not what the State undertakes to do has an extra-territorial effect. If what the State attempts to do is to influence a situation in another State or influence interstate commerce, then the State ought not to want to do it, because the sister State may come along and do the same thing.

Mr. ADAMSON. Well, my question to you is, Would not an order from the Interstate Commerce Commission or from the courts of the country have exactly the same force and effect upon the corporation doing that, regardless of where its charter was?

Mr. THOM. Undoubtedly that is so, but the order the Interstate Commerce Commission may issue is limited by the statutes of the United States. They can not go beyond the statutes.

Mr. ADAMSON. But we can change that statute without changing the incorporation laws?

Mr. THOM. Undoubtedly, and I have never contended you could not. I have never contended that it was necessary, as a measure of putting into effect the law, that you had to change the incorporation law. You can extend the power of interstate-commerce control over the local rates in the States without incorporation——

Mr. ADAMSON. Well, then, is not this a possibility—I do not mean to say that exactly, either—but is it not a possibility that while it is admittedly possible that the Interstate Commerce Commission, under authority of Congress or the power of Congress to regulate all State corporations, that it might be possible, under a Federal corporation, to prevent the State from doing some of those things which they have a right to do now?

Mr. THOM. I do not think it is possible to do that under a well-balanced law of Congress, because I think the law will expressly reserve to the State all those things that Congress feels it ought to have, and Congress represents the States, you know.

Mr. ADAMSON. It has been generally accepted that the power of Congress to regulate these matters rests upon the clause of the Constitution giving the Federal Government power to regulate commerce, and it has been said that the power of the Federal Government in that respect has gradually grown, but I have never understood exactly what was meant until I came to Congress and went to consider the commerce clause of the Constitution, and my own judgment is if this Republic is ever sent to the bad, it is more likely to occur through the commerce clause of the Constitution than any other. If Congress may control everything in connection with the police powers of the States and then itself prescribe practically what those police limitations are, Congress being always in session with power to change the law, it may grow and grow and grow until the idea will become prevalent—and it seems to have become quite prevalent among the

railroad executives now—that consolidation of power is what we should have.

Mr. THOM. Judge, I do not think there is a student of public affairs who can fail to know that the very difficulty now that is becoming a large difficulty is coming just in the opposite direction. We had, at one time, certain influences that were operating to nationalize this country. In the first place, we had slavery. There was one section of the country that approved of it; there was another section of the country that disapproved of it.

Mr. ADAMSON. There was a good time to mention Georgia again. She was opposed to slavery and liquor at the time the Constitution was adopted.

Mr. THOM. There was another section of the country opposed to it, and that issue was so great as to make one party opposed to the extension of the national rights and the other party in favor of it. In other words, there was then the State rights party and the national party. Then we came along, at that same time, to the tariff question. There was certain agricultural States that believed in free trade. There were certain manufacturing States that wanted a tariff. The one party wanted to preserve free trade through the power of the States, and the other party wanted to extend a protective system to the power of the Nation, and there was an influence in favor of nationalization.

Then we came along to the period of reconstruction. There were at that time, certain States that wanted to limit the power of the Nation in respect to reconstruction. There was another party that wanted to insist on a large delegation and application of the national power, and that made a national issue. Now, all those things have disappeared. The South, which generally was on the other side, has gotten manufacturing interests, and its real view is divided on the question of the tariff, like any other section of the country, and with the disappearance of those issues, which have divided the country on the lines I have mentioned, it is now a fact that local conditions elect a man in Massachusetts just like local conditions elect a man in Georgia, and every man in public life has reference now to his local conditions rather than to national conditions in considering the forces which must keep him in public life or put him out of public life, and therefore to-day the influences in Massachusetts for local power are just as operative as they are in Virginia or in Georgia and the result has been instead of having a division between the people that nationalists and people that are not in this country we have now the common judgment of the country, divided on whether or not they can best use the national power to do what they want to do, or the State power to do what they want to do. If they think they can use the national power to get a child-labor law they will use that instead of the State law. If they think they can use the national power to get universal prohibition they will use that. In other words, there is no philosophical division of the States in this country any longer between those who believe in national power and those who do not believe in national power. It is a mere question now which they can use to better advantage, and our country down yonder will as soon lay hold of the national power to carry out an object which they think they can acquire better in that way, and extend the national construction of the Constitution in order to do

that as any other section of the country, and so the danger now is not from a division of the parties in respect to national issues, but there is an entire disregard of that school of interpretation of the Constitution which divides parties on the one hand into Federalists and the other side into State rights people, and the question comes back in every locality, "Which can we use best, the National Government or the State Government, in order to attain our purpose?" and no interpretation of an academic nature of the Constitution is allowed to stand in its way, and I believe that the tendencies of this day, instead of toward federalization and the vesting of power in the Federal Government, are just the other way.

Mr. ADAMSON. It seems to have had a different effect, judging from the experience of the railroad executives. You remember, along when you say the Southern Railway leased you, we were trying to amend the old act to regulate commerce, and the representatives of the railway companies who appeared before us claimed that we were violating the State rights doctrine in reference to local control and State rights. We went ahead and legislated, but before it was over litigation had started in the various States, and the last contention made was that it was a Federal matter and not a State matter.

Now, you have said that they have all come to the belief that this is a matter of getting all the control of the transportation companies—the entire control of them—into the hands of the Federal Government.

Mr. THOM. I did not quite say that. I said that in all features that would substantially affect their service to the public—

Mr. ADAMSON. My recollection is also that at that time they were opposed to arbitration. More recently they have come to the idea that the Federal provision for arbitration should be extended—

Mr. THOM. You can not at all criticize anybody—

Mr. ADAMSON. I am not criticizing you. I am just getting the trend of historical and chronological events.

Mr. THOM. I understand some Members of Congress were in favor of arbitration a few years ago that do not believe in it now. [Laughter.]

Mr. ADAMSON. I remember very well that in full accord with the railroad view at that time I helped defeat the Townsend bill for compulsory arbitration.

Mr. THOM. Did you vote for the Newlands bill two years ago?

Mr. ADAMSON. I do not remember. I was not a ferocious advocate of it.

Mr. THOM. you are familiar with the efforts we have made to regulate stocks and bonds?

Mr. THOM. Yes, sir.

Mr. ADAMSON. The House passed the Rayburn bill once and sent it to the Senate, and we have reported it from our committee again and have it on the calendar. Don't you think, with some amendments which you have thought about, if that bill became a law that we could have an intelligent control of the financing of corporations?

Mr. THOM. Judge, I attempted to develop in the remarks which I made the difficulties which seem to me to be inherent in that situation. I believe, in a very ample way, in the constitutional power of Congress to control that subject. I argued that before your committee.

Mr. ADAMSON. Yes; I know you did.

Mr. THOM. And I argued it before every committee of Congress, and I have attempted to facilitate, in every way that my powers would permit, the adoption of a single system of Federal regulation of the issue of securities. I believe that that law would have been absolutely constitutional. I can not close my eyes, however, to the importance of having a law on that subject, not in the interests of the railroads alone, but in the far greater interest of the public, which will be universally accepted as constitutional, and in spite of men of the highest legal eminence, who believe that such a system would not be accepted by the investing public until it is finally indorsed by the Supreme Court of the United States. Now, are we going to ignore that legal view? Can we safely do that? I know your constitutional views and mine agree on that subject. We both believe that the Federal power is ample to do this thing we are talking about, but we are both under responsibilities which rest upon us, respectively; you to represent the great public interest in your official position, and I as responsible for the successful provision of means for the performance of the public duties which rest on the instrumentality with which I am connected and a part. We are both supremely interested in having a system of financing the railroads that will be universally accepted. I know this will not be universally accepted, and therefore, as a means of getting the thing which will be universally accepted, I believe that incorporation is a wise step on the part of the Federal Government.

Mr. ADAMSON. But not necessarily one?

Mr. THOM. I do not think it is necessary. I have your constitutional view on that question, Judge Adamson.

Mr. ADAMSON. Mr. Thom, your idea is that investors, looking at a bond signed by a Federal corporation, would at first blush naturally regard it as more important, or more reliable, than a bond issued by a corporation under local authorities?

Mr. THOM. That view has not specially impressed me.

Mr. ADAMSON. He could understand it better?

Mr. THOM. I have never seen any hesitation on the part of investors to unduly honor anything a State did about that. That is not my difficulty. My difficulty is, first, that we can not possibly be subjected to the necessity of going to four or five authorities without losing time that is most valuable and which is absolutely essential to our securities first.

Mr. ADAMSON. Is that the only difficulty?

Mr. THOM. No, sir; I say first. Now, second, I think, moreover, that if it comes to pass that the authority of the National Government, which is so created as to be exclusive of the necessity for any other approval, if that assumes to contravene some charter power of a State court; if it exceeds the authority granted by the statute of the State in creating the corporation, that is a question raised as to the validity of the order of the Federal corporation, or of the Federal body, and therefore a question raised as to the validity of the security issued, which will not be determined by the interested parties.

Mr. ADAMSON. Is that true, although an act of Congress has said that that corporation shall be required to do it?

Mr. THOM. It is true that there will be that difference of opinion about it. In my judgment, which is in accord with yours, I have

no hesitation whatever in forming my opinion as to the way the Supreme Court will decide.

Mr. ADAMSON. I know, but the investors you say—

Mr. THOM. The investors will wait until they have that question decided.

Mr. ADAMSON. Although an act of Congress has authorized it?

Mr. THOM. I think so. You will have a period of uncertainty, a confusion of this most important matter where traffic is waiting for a supply of cars, and you can not get the money to furnish them until you go to the Supreme Court of the United States, and I do not think it is wise, when we have got a way of avoiding that, for us to incur that difficulty.

Mr. ADAMSON. The same argument of Federal control in order to prevent diversity and make uniformity, it would seem to me, would apply to all other transactions with equal force, would it not? For instance, I own a little land in some towns in my State and some in Senator Robinson's State—a very little—some in Senator Underwood's State, and the city, town, and county in each State imposes a different rate of taxation, and all the three States differ in all these respects, and yet I have got to keep up with them.

Mr. THOM. Yes; and that is your entirely private matter; the public is not interested in it.

Mr. ADAMSON. I know, in different States entirely; and the argument is that it ought to be made easier to attend to my business, and it looks to me like it ought to have some consideration.

Mr. THOM. I do not think so. I am too much of a State's right man to think that. I feel we have no standing here if we come to present our own private interests in this matter of financing. But if it is true, as I believe it to be true, that there is a tremendous public interest in our capacity to adequately finance and to promptly finance in order that we may get the means of furnishing the cars and tracks and the yards and other facilities which you want for your three farms—

Mr. ADAMSON. Yes; and ought to have them.

Mr. THOM. Then it becomes a public interest and must be considered from the standpoint of that public interest, and the thing that the public interest requires is a guarded system of supervising the issue of these securities so that there may not be any improper exploiting of the credit of the companies, and that the method shall be a prompt and workable one so that the public needs will not have to wait because of unnecessary red tape.

Mr. ADAMSON. I enjoyed your description of the growth of the Southern Railroad, with which I was familiar before you were; I was with it when it started—not associated with it, but I am acquainted with it, and I have admired it all along, and I admire its liberality and its public spirit and all that, perhaps above all other railroads. There are great systems in this country. And you described it so beautifully as growing up in harmony and happiness and prosperity under the laws of 11 different States, the present system.

Mr. THOM. I do not recognize my picture, Judge Adamson.

Mr. ADAMSON. I want to ask you the advantages of the consolidation of that large number of roads, I want to ask you if the con-

solidation of all of them into one management reduces greatly the expenses of administration?

Mr. THOM. Immensely.

Mr. ADAMSON. Does it do that by dispensing with the services of men, officials, presidents, and general managers and lawyers and train operators?

Mr. THOM. Well, that is a very small part of it, Judge.

Mr. ADAMSON. Does it dispense with them?

Mr. THOM. It extends executive authority over tremendous areas of lines, and in addition to that, however, it enables you to divide the operation of those properties into appropriate divisions where rolling stock will be safe, where locomotive power will be safe, where matters may be coordinated, where connections may be made, where yards can be simplified, and in the thousand and one other different ways making the thing operate as one coordinated system.

Mr. ADAMSON. Is it not true that sometimes in making a division that a fat town or section may be coupled with a lean town or section and make the whole division more profitable?

Mr. THOM. Well, I have no such illustration in my mind. I do not know exactly to what you allude.

Mr. ADAMSON. Is not that true that sometimes a division is so constructed that one part of it, one part of the railroad would not pay and one part of the railroad did pay, and that together they can be made to operate profitably?

Mr. THOM. The history of almost every railroad in this country is that when started it did not pay, and that then when you got feeders they did not pay. Now if you take one of those feeders and consider merely its revenues, what it earns on its own line, it is a failure. But when you take that traffic and send it under one ownership 5,000 miles over some other parts of the line owned by those people, the earning on all of them will justify the parent company in keeping up that feeder because of the revenues it gets on the balance of its line for the great haul it makes of that small contributor.

Mr. ADAMSON. Then a hodge-podge of different lines and parts of lines will enable the contribution of those that do pay to help you run successfully those which would not by themselves pay?

Mr. THOM. Yes; it does, for the feeder's contribution is not merely what it earns itself, but the contribution that its traffic makes over the whole long haul that is carried over the entire haul.

Mr. ADAMSON. Of course it delivers business to you and you make a profit on the long haul?

Mr. THOM. Yes, sir.

Mr. ADAMSON. You have that advantage, and the advantage that you economize by dispensing with men and officials, and what other advantages?

Mr. THOM. And also you economize by consolidating the terminals, points of connection, and the more economical use of your rolling stock, they all go to make it a much cheaper method of operation.

Mr. ADAMSON. You consolidate the railroads in 11 States, the process which you have described by which that was done was sometimes an insolvent railroad would go through the mill and would be acquired, either through the mill or voluntarily. I sup-

pose if lean times should come you would be able to acquire other roads in the same way?

Mr. THOM. The policy of a great many roads in this country now has turned away from the policy of extension into the policy of intensive improvement of their facilities within the territory they already occupy. Some railroads have come to the conclusion that the extension of lines has gone as far in respect to that particular system as it ought to go, unless they have the means to fully develop the properties that they have already acquired and make them thoroughly serviceable within the territorial limits that they already occupy. Now, I know when Mr. Finley came into the presidency of the Southern Railroad that he deliberately adopted the policy of acquiring no new lines, but of improving the lines that he had already acquired; all the money he could raise he put into improving the lines within what was then known as the system.

Mr. ADAMSON. If it is advantageous and profitable for everybody to consolidate railroads in 11 States, why would it not be advantageous and profitable to make still larger consolidations?

Mr. THOM. Because it is always a question of wisdom and human endeavor involved, and a man has got to look at all the conditions that surround him and determine whether or not wisdom leads him in this direction or that. Frequently there is a mistake in the judgment, but at last it must be decided as a question of choice between two courses. One man will think that it is to the interest of the system to get into a certain market; another man will think that it is to the interest of the system to improve its methods and get to the market which it already reaches. That is a matter of judgment.

Mr. ADAMSON. If you were to consolidate with the Coast Line, the Air Line, the Chesapeake & Ohio, and the Norfolk & Western you still would not be much larger than the Pennsylvania system, would you?

Mr. THOM. I have never compared these lines.

Mr. ADAMSON. There are systems in the country a great deal larger than yours, are there not?

Mr. THOM. Yes, sir.

Mr. ADAMSON. If you are going to take out a Federal charter under an act of Congress, would you take out one for each one of the corporations you acquired, or would you take it out for your entire system?

Mr. THOM. The system which I would adopt would require each corporation that now exists to take out a Federal charter, but I would also provide the machinery by which under the direction and with the permission of the Interstate Commerce Commission they could consolidate.

Mr. ADAMSON. Ultimately go into one?

Mr. THOM. Ultimately go into one, just so far as the Interstate Commerce Commission approved.

Mr. ADAMSON. If consolidation is desirable and capital is more easily enticed by a great—

Mr. THOM. Do not talk about enticing, Judge; we do not want to—

Mr. ADAMSON. Well, less repelled.

Mr. THOM. Let us say attracted.

Mr. ADAMSON. By one strong Federal corporation, why have so many, why not have just one great big one?

Mr. THOM. Because that is the only method you can pursue with convenience. What Congress would be obliged to say would be—you have got to take the situation as it is to-day and to say that no railroad corporation shall, after a day which Congress fixed to engage in interstate commerce unless it takes out a charter under this act. Now, you could not say, as a preliminary to taking out a charter under this act, you must find some way of consolidating before you take it out. You must say you must come in here and then when you come in here I will give you the facilities of consolidation.

Mr. ADAMSON. Do you propose to go to the policy by which the Federal Government would indulge in prohibition, by which carriers would engage in interstate commerce—

Mr. THOM. To that extent; yes.

Mr. ADAMSON. Has not our policy heretofore been to force them, primarily, all to make through routes, to have joint rates, before they go into business at all?

Mr. THOM. This would be a very cogent invitation for them to continue. They are not going out of business. Some people have suggested as a method of doing this the taxing power, taxing the corporation that stays outside, like they do the bank. We believe that the best method is to say you shall not engage in interstate and foreign commerce—that is, 85 per cent of your business—you shall not engage in that business unless you come in under Federal charter, and we have no fear whatever there would be any of them left out.

Mr. ADAMSON. Then, if you did not do it, what would you do with that gap?

Mr. THOM. With that gap?

Mr. ADAMSON. Yes.

Mr. THOM. There will be no such gap, Judge, but if there is there will be found some other way of filling it out. In other words, let us find out how the gap would be made.

Mr. ADAMSON. Would it not be a good, old, honest, plain way to start this thing, if you want Federal incorporation, just for somebody who wants to build a new railroad to apply and get a Federal corporation, and go ahead and build one, and show how it works?

Mr. THOM. They did that many years ago.

Mr. ADAMSON. I know; but you want to do it again.

Mr. THOM. Why, that did not solve the problem.

Mr. ADAMSON. It obviates all of these troublesome questions that you are talking about, how to take somebody else's property and turn it over to a new corporation.

Mr. THOM. It does not touch the problem. Here are 250,000 miles of railroad in this country, in round numbers. That is the problem you are dealing with primarily. Now, you can not deal with that problem—you can not touch that problem by saying hereafter, when there is a railroad, you must take a Federal charter.

Mr. ADAMSON. Oh, yes; you can. You can forbid any present one to go in that wants to; but I will give you a good suggestion.

Mr. THOM. I will be glad to have it.

Mr. ADAMSON. Suppose you started in north Georgia and ran down through western Georgia and eastern Alabama to the Gulf,

down about St. Andrews Bay, where they need a railroad—everybody along through the country—and take a Federal charter and build that railroad. You can get money so much easier on a Federal charter, and people have been trying for generations to get that country opened up, and surrounding railroads tell them there are railroads enough, and they can not get capital in it at all, and it is the best place I know of in the world to try the attracting effect of a Federal charter.

Mr. THOM. Judge, my proposition—

Mr. ADAMSON. You will not have any of these questions of taking over the property of adjacent corporations.

Mr. THOM. No; and you will not deal with your problem, either.

Mr. ADAMSON. Oh, yes.

Mr. THOM. Now, my proposition is to deal with your problem by requiring that that company that you allude to shall be a Federal incorporation, because under our recommendation there will be a necessity for its being a Federal corporation, and the machinery would be there for the purpose of enabling it to be a newly incorporated agency of commerce.

Mr. ADAMSON. Is there anything in the way of your building it now, under Federal charter?

Mr. THOM. Yes, sir.

Mr. ADAMSON. What is it?

Mr. THOM. We have not got a statute. We can, of course, get one from Congress, maybe, but that is not the point with us. We have a problem already existing. Here are 250,000 miles of railroad with which you are primarily interested. That is your problem. You have got to strengthen and perfect that for continued usefulness. You can not say, "We will put that aside and wait until we see how the railroad from north Georgia to Alabama turns out." If it is a problem, why, you have got to deal with that. If it is not a problem, there is no justification for your doing it. If I am mistaken in thinking that the country has a problem on its hands now, all of the contentions that I have made are ill founded. I think you have got a problem. I have attempted to show you you have got a problem as to the present 250,000 miles of road. Now, to suggest to me that that problem should be entirely ignored, and we should attempt to deal with the situation by operating under a Federal charter from north Georgia to Alabama, does not at all reach the question. We have already tried that in a charter to the Union Pacific. We have tried—

Mr. ADAMSON. That was Government aid, was it not?

Mr. THOM. Government charter.

Mr. ADAMSON. The Government got behind it?

Mr. THOM. No, sir; they chartered it.

Mr. ADAMSON. I know they did it.

Mr. THOM. And they chartered the Texas & Pacific. We know what the history of this country has been in respect to individual roads under Federal charters, but that is not our problem. That is not the problem that we think exists, and, therefore, we do not have to go back to a charter on new roads to know how Federal charters act. We have already done that.

Mr. ADAMSON. In talking to Senator Newlands—Mr. Chairman Newlands—a few minutes ago you agreed with him on the proposi-

tion about the relation respectively between bonds and stocks and physical property. I wanted to ask you if I understood you right, that bonds and stock stood for the same thing, and, therefore, if one was taxed the other ought not to be?

Mr. THOM. I was very careful to draw a distinction in what I said to the chairman on that subject.

Mr. ADAMSON. I misunderstood you, then. Now, if bonds and stock amount to the same thing, the stock is of no account if the bonds are good. As I understand this, a railroad, like a man, makes a debt, but he expects to earn profits enough on the property to pay off the debt and still have the property. So, is it not true that the man who holds the debt has good property if the debt is good, and the man who owns the stock has good property if the property is solvent and it earns enough to pay?

Mr. THOM. Undoubtedly; and nothing I have said to the chairman was contrary to that.

Mr. ADAMSON. I must have misunderstood you. I thought you agreed with him that they both ought not to be taxed because they represent the same thing.

Mr. THOM. No; I made a distinction between the two classes of property in what I said to the chairman.

Mr. ADAMSON. Now, in relation to your method of acquiring these railroads from the present owners—it is about time to adjourn, though, and I will not go into that.

Senator ROBINSON. Mr. Chairman, I move that the committee adjourn.

The motion was agreed to; and at 1.30 o'clock p. m. the committee adjourned until to-morrow, Tuesday, November 28, 1916, at 10.30 o'clock a. m.



# INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT CONTROL AND REGULATION.

TUESDAY, NOVEMBER 28, 1916.

CONGRESS OF THE UNITED STATES,  
JOINT COMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The joint committee met at 10.30 o'clock a. m., pursuant to adjournment, Senator Francis G. Newlands presiding, also Vice Chairman William C. Adamson.

**MR. ALFRED P. THOM—Resumed.**

The CHAIRMAN. The committee will come to order. Mr. Adamson, you may proceed with your interrogations.

Mr. ADAMSON. Mr. Thom, before proceeding to the other subjects as to which I was about to interrogate you when we adjourned yesterday, I would like to ask you a little about one phase of your testimony that I suppose was covered by the Shreveport case. I read a good many pages, and in fact several volumes about that. The courts and commission seem to be playing hide and seek and bull frog and tumble about it. I want to ask you if there is any authority in the Constitution, apart from your conception of the commerce clause, that would authorize the Federal Government to go inside a State and raise a rate between two intrastate points?

Mr. THOM. There is the clause of the Constitution forbidding any discrimination between ports, which might do it in some cases—it might have that effect in some cases.

Mr. ADAMSON. Of course, there are some ports in Texas and some in Louisiana. As I understand it, the point touched by the Shreveport case did not affect ports; they were internal points.

Mr. THOM. I did not understand you to confine your question entirely to the Shreveport case but generally.

Mr. ADAMSON. Of course, your answer about ports would be an answer in some cases, but where points inside the State are not ports, what authority would you find?

Mr. THOM. Then the commerce clause is the only one that I know of.

Mr. ADAMSON. Then the contention of those who insist on that construction would be, in effect, that if the internal business of a State is prosperous and local business could be carried at a profit at a lower rate than it could between similar points in sister States, that that business and that State ought to be required to contribute the equality under the commerce clause of the Constitution?

Mr. THOM. I do not understand that to be the contention, Judge.

Mr. ADAMSON. Well, on what theory can they insist that the internal business of the State of Texas itself is so prosperous without affecting or touching anybody else that it would be a reasonable and just rate and profitable between those two points—on what theory can you say that you are compelled to go outside and compare that with somebody else's condition and raise the rate that is profitable there?

Mr. THOM. I understand the situation to be this: Let us take the condition that you refer to, within the State of Texas, of a prosperous business, and let us compare that with the prosperous condition of business between the cities of New York and Philadelphia, where there is great density of traffic. Now, one of those businesses you refer to is intrastate; the business between New York and Philadelphia is interstate. I understand that the view of the Constitution is that there shall be no reference to the line of the State in determining the conditions on which commerce should move, and if the conditions within a State relating to a larger traffic are such as to justify a lower rate, that rate will be made lower, although it is within the State, just as the rate between New York and Philadelphia perhaps ought to be made lower than the rate between Petersburg and Norfolk. One is in a State and the other is outside of it. The point of the Shreveport case is that there was a deliberate policy on the part of the State of Texas to exclude Louisiana points of production or distribution from the markets of the State of Texas and that the power over rates was used for the purpose of controlling Texas markets for Texas points of distribution.

Mr. ADAMSON. Well, what was the motive for them to do it if there was something in the letter of the law and Constitution as to the rates established?

Mr. THOM. There was nothing in the letter of the law to justify it.

Mr. ADAMSON. The Constitution says that Congress shall regulate traffic between the States or among the States and not within the State of Texas.

Mr. THOM. Undoubtedly it says that, but it can not be permitted—no State can be permitted to so regulate commerce within its borders as to go outside and have an effect on commerce beyond its borders, because if it does Congress can not regulate the commerce between the States. That is most forcibly presented by the Supreme Court of the United States in the Shreveport case, and if you will let me I will give you further record with respect to that argument.

Now, here they are: Here is the commerce within the State of Texas that moves at such a low rate that either Congress must bow to that rate in fixing its own interstate rates or cease to regulate the commerce over which it has jurisdiction. Now, if it bows to the will of the State in respect to the rate, then it has accepted the standard of the State as to interstate commerce and has given up its obligation to the people to regulate interstate commerce. If it does not bow to that will of the State in respect to that matter, then it must create the standards on which both shall move.

Mr. ADAMSON. Now, I fully understand—

Mr. THOM. Because the two classes of business are inseparable, one from the other.

Mr. ADAMSON. I fully understand your line of reasoning applicable to a continuous line over the same tracks. If there were a through line through the State of Texas, or one State on this side

and one State on the other side, and the State of Texas had a lower rate inside of the State locally than a Federal commission would not regard that lower rate in making up the through rate, but would allow the Federal regulations to govern the shipments entirely through the State. For instance, I at one time started to New Orleans in a hurry and got down to the depot to go to West Point. I wanted to get an excursion ticket. It had been selling at \$15. The rate in Georgia to West Point was 2 cents, and at that rate they make a good living out of it. From West Point through Alabama to the Mississippi line it was two and a half, and to Mississippi it was either 2.25 or two and a half. They charged me three cents a mile solid from Newnan to New Orleans in interstate business. We can understand that the Federal commission upholds that, because they say in making through transportation over that through line they do not have to regard those local State rates. But they do not order those States to raise their local rate as to intrastate traffic. They just state in making the through rate it would be disregarded.

MR. THOM. I suppose it could be realized that the whole purpose of the Constitution would be disappointed if any one State had a right to exclude people across the borders from dealing with its people.

MR. ADAMSON. Was there any evidence, internal or external, connected with the statute regulating that rate in Texas to show that their purpose was an embargo on export business?

MR. THOM. I understand that to be a conceded part of the argument; that they claim that right to absolutely hold Texas markets for Texas distributing points. At any rate that was the basis on which the matter was treated in the Supreme Court of the United States and by the Interstate Commerce Commission.

MR. ADAMSON. When I was examining you yesterday, I had misplaced my book in which I had scribbled some allusions to your testimony, but I can hardly read them, and I do not know exactly what reference they had to your testimony, when I can read them; but I notice that you talked about the diversity of State statutes. I will ask you if the railroad companies have not been as active as any other citizens always in looking after the legislation in the various States?

MR. THOM. Judge, the railroad companies, of course, must try to put their cases before the legislators—

MR. ADAMSON (interposing). They have a right to do that. I just asked you if that is not the fact?

MR. THOM. I assume that the legislators want every point of view before they come to pass upon any matter of public importance; but I can not too strongly emphasize here, if you will permit me, the utter lack of justification, in the interest of the people who need a perfected system of transportation, to try and make every question turn upon whether or not heretofore the people have been mistaken or the railroads have been mistaken.

MR. ADAMSON. I do not think that is involved in the question I asked you. I have quite a different purpose in asking you that question.

MR. THOM. If there has been a system most objectionable in the management of these railroads, that in no way answers the need of the public for facilities in the future.

Mr. ADAMSON. I have not come to that, either. I just asked you the fact, if you have not exercised your constitutional rights, as other citizens, to look after legislation in the various State legislatures—any legislation that affected the railroad companies? You have a right to do that.

Mr. THOM. I have no doubt that whenever a case has come up the matter has been presented to the legislators by the railroads as best they could. I have no more knowledge of that than you have.

Mr. ADAMSON. Do you not think that the light that these very able railroad men were able to shed on the deliberations of the State legislators had some influence on legislation?

Mr. THOM. I have no doubt on earth that it has had a beneficial influence to bring out a more comprehensive view of the situation.

Mr. ADAMSON. For instance, you alluded to the full-crew law. How many States have that?

Mr. THOM. I do not know; but a good many have it and a good many have not.

Mr. ADAMSON. Do you not suppose that the enlightened efforts of the railroad advocates before the legislatures prevented its enactment in many States?

Mr. THOM. They may have in one State and not in another. Enlightenment does not seem to be the test, because the enlightenment was the same in all the States but the results were different.

Mr. ADAMSON. They used their light everywhere alike; but all substances and surfaces do not receive light as susceptibly.

Mr. THOM. Therefore, in dealing with a problem that is universal we ought to get to a place where light has the same effect everywhere.

Mr. ADAMSON. I will get to that argument later; but I will stick now to this one question, if you will answer me. There is no doubt, then, that the efforts of the railroad companies themselves in the various States, using their influence in some places where it would take and some where it would not, has had some effect in producing this diversity of legislation?

Mr. THOM. Yes; but the difference between——

Mr. ADAMSON (interposing). Is that true?

Mr. THOM. The difference in effect would be either to accept universal disaster or try to obviate it in some places.

Mr. ADAMSON. I am not talking about the result; I am talking about the fact.

Mr. THOM. You know as much about that as I do.

Mr. ADAMSON. I know; but I am not the witness.

Mr. THOM. But you must not interpret——

Mr. ADAMSON (interposing). I know all the subjects that you are posted on, and when I have a good witness I want to prove something.

Mr. THOM. Undoubtedly, if you want to know that, when there is a case involving a railroad, and it is presented to two different legislatures, the result in one case will be different from the result in the other case, and diversity will be created which is hurtful to the whole public.

Mr. ADAMSON. And yet if your influence had not been exerted in all those places there might have been different action in some places?

Mr. THOM. And there might have been universal disaster, instead of our having diverted it in some cases.

Mr. ADAMSON. On the other hand, there might have been universal blessing?

Mr. THOM. That depends on whether it is a universal blessing to put a charge upon the commerce of this country everywhere equal to the charge that is put upon it by Pennsylvania and New Jersey for this extra-crew law.

Mr. ADAMSON. As you have mentioned the extra-crew law, is your chief objection to that—I mean, the objection of the companies, because you claim you do not object personally to anything—but is the main objection to that the expense that it puts on the roads?

Mr. THOM. Oh, yes; certainly.

Mr. ADAMSON. Are you familiar with the operation of these long trains on these roads?

Mr. THOM. I have never operated any, but I have looked at them as they went by.

Mr. ADAMSON. Did you ever see one with 75 or 100 cars in it?

Mr. THOM. I have, indeed.

Mr. ADAMSON. And two engines at the head of it?

Mr. THOM. Yes.

Mr. ADAMSON. How many crews run on one of those double-headers of 100 cars?

Mr. THOM. I do not know, but they are all automatically controlled by a system of brakes.

Mr. ADAMSON. That is not the question; I will come to that later. The question is, How many crews are on them?

Mr. THOM. I do not know.

Mr. ADAMSON. There are not as many as there would be if each engine just had as many cars as it could carry and run along, are there?

Mr. THOM. There are not as many as there would be?

Mr. ADAMSON. Yes.

Mr. THOM. There are just as many as there would be.

Mr. ADAMSON. Then you do not save any crews?

Mr. THOM. What?

Mr. ADAMSON. I say, then you do not save anything in the number of crews?

Mr. THOM. By what?

Mr. ADAMSON. By the double-headers and a hundred cars in a train?

Mr. THOM. No; we do not make the crews less than we would on a train with a single engine.

Mr. ADAMSON. Where is the expense, then, of what you call the "full-crew law"?

Mr. THOM. Because it requires more people than are necessary. They say they want—that it is a good thing to have an extra man to make up a hand at bridge in the caboose; that he can stay there and play cards during the trip.

Mr. ADAMSON. You are not prepared to say just how many men constitute a crew?

Mr. THOM. No. I am not an operating man. You will have people here on that subject.

Mr. ADAMSON. I know that. I do not want you to answer anything that you do not know, of course. I just asked you if you are prepared to say.

Mr. THOM. No; I do not know how many men. I might guess pretty accurately, but I am not an operating man, and I am not discussing operating questions.

Mr. ADAMSON. Then, I will go back into the field where you are skilled. Yesterday you made a distinction in your process of transmogrification—

Mr. THOM. Between the what?

Mr. ADAMSON (continuing). Your transmogrification from State corporations to Federal corporations; you made a distinction between condemning the property and the stock, on the one hand, and local taxation on the other. You argued that because these people invested with knowledge that Congress had the constitutional power to regulate them *ad libitum*—

Mr. THOM (interposing). No; not *ad libitum*; within constitutional limitations.

Mr. ADAMSON. Well, does not Congress sort of take its own view about the Constitution when it is making law?

Mr. THOM. Sometimes it is checked up a bit in the Supreme Court.

Mr. ADAMSON. I know, but not until after Congress acts.

Mr. THOM. No; they could not do it before they act.

Mr. ADAMSON. You say they made their investments with the knowledge that Congress had the constitutional right to regulate commerce, and that therefore it is all right to condemn them, dislodge them, and put their effects into a Federal corporation; then you say that you do not advocate taking the taxing power away from the States at all. I just want to ask you if the States did not go into the Union and make their delegation of authority and reservation of authority with the same notice, that Congress had the power to regulate commerce in every respect?

Mr. THOM. Yes; and the Congress would have the power to control the question of taxation, too. My remarks on that went to the wisdom of the exercise of that power.

Mr. ADAMSON. As a matter of policy?

Mr. THOM. To the wisdom of the exercise of the power.

Mr. ADAMSON. You are like St. Paul: All things are right unto you, but all things are no expedient?

Mr. THOM. I would like to be like St. Paul, but I have not fully found the parallel.

Mr. ADAMSON. Now, the obstacle to taxation of the physical property or the stock would be the inhibition against direct taxation, would it not?

Mr. THOM. What is that? I did not catch that.

Mr. ADAMSON. The obstacle to the Federal Government taking over the taxing power would be the inhibition against direct taxation?

Mr. THOM. No. That could be very easily accomplished without running counter to that.

Mr. ADAMSON. By an income tax?

Mr. THOM. By a tax on the gross earnings as an excise tax.

Mr. ADAMSON. I am glad you do not advocate that.

Mr. THOM. I try to keep within the Constitution, Judge.

Mr. ADAMSON. You say that would be constitutional?

Mr. THOM. What?

Mr. ADAMSON. To interfere with the taxing power.

Mr. THOM. That is a different thing from interfering with anybody else taxing and imposing upon yourselves.

Mr. ADAMSON. I want to ask you now about the disposition of the property of those State corporations. You condemn a road like the one the newspapers are talking about now, down in the Southwest—the New Orleans, Texas & Mexican Railroad—that is, when it is found to be a little over \$7,000,000 in debt, with capital stock of \$12,000,000 and bonded indebtedness of \$40,000,000. I would like to know what disposition would be made of a case like that in your condemnation proceedings?

Mr. THOM. I do not think any condemnation proceeding is necessary, Judge.

Mr. ADAMSON. What would you do there? Bankrupt it?

Mr. THOM. No. I believe that you are obliged to recognize the things that have happened in this country. You are obliged to proceed henceforth with respect to the rights—whatever those rights are—that have already been created under the laws of the various States.

Mr. ADAMSON. Leave them undisturbed, as they are?

Mr. THOM. Yes. You would not get rid, by the idea that I am suggesting, of any of your difficulties in respect to the present statutes relating to capitalization, unless you did this—unless you in your Federal system of capitalization issued stock without par value, and gave share for share to the owners of the stock in the State corporations. Of course, the par value of stock means nothing?

Mr. ADAMSON. You would not do that by compulsion? You would have to base that on agreement?

Mr. THOM. I do not know how that would be. I think the stockholder gets the exact equivalent of what he has now. That merely gets rid of the nominal capitalization.

Mr. ADAMSON. You thought yesterday or day before, in your direct testimony, that the holders of the stocks and bonds would not generally object—

Mr. THOM. That is what I thought.

Mr. ADAMSON (continuing). To reorganization under Federal charters.

Mr. THOM. Yes; that is my belief, and whether they object or not they have nothing to do with it; they can not help it.

Mr. ADAMSON. You would have a right to do it, anyhow?

Mr. THOM. Undoubtedly.

Mr. ADAMSON. Suppose one of those corporations that you were about to condemn were under the weather financially; not prosperous—would not bring much under the hammer, either the physical property or the securities, and yet the holders are hopeful—hope springs eternal in the human breast, you know; and when you drafted a lease into the Southern Railway it was not a great big rollicking thing like it is now. They grow; they have a right to grow. Have not those stockholders and security holders a right to say “We are looking for better times; let us alone, we will prosper if you will let us alone instead of selling us under the hammer”?

Mr. THOM. I have made no suggestion about selling anybody under the hammer.

Mr. ADAMSON. Condemnation means that, does it not?

Mr. THOM. I did not say anything about condemnation. That is an idea that your question produced. I did not say that condemnation is necessary. I do not think it is.

Mr. ADAMSON. I may have confused you, in my mind, with Secretary Olney. Great men all look alike to me.

Mr. THOM. If you will get me confused with him, I will be perfectly delighted; I will get so much more than I give, that I will be the gainer.

Mr. ADAMSON. What was your proposition, then? One of agreement?

Mr. THOM. My proposition is this: That when the people who obtain a financial interest in one of these railroads authorized to engage in interstate commerce, did so either by the purchase of bonds or stock, they accepted their contract relations limited by the possibility that Congress might at any time exercise its full power under the commerce clause of the Constitution to regulate it.

Mr. ADAMSON. I understand that.

Mr. THOM. That a system of Federal incorporation is a proper system of regulating commerce, and therefore they hold their securities subject to the adoption by Congress, under its power of regulation, of a compulsory incorporation system.

Mr. ADAMSON. I understand that.

Mr. THOM. And when Congress does that they must permit their property to come in under that Federal incorporation without the claim of damages against us.

Mr. ADAMSON. I understand all that; but how do you get to the critical point where the transition is to be made? We have suggested an agreement, but if you do not agree, then what do you suggest?

Mr. THOM. Here is where we make the transition, and it seems simple to me. First, Congress passes a law, and then fixes a date when no corporation shall engage in interstate commerce unless it takes out a charter under the national law.

Mr. ADAMSON. That involves a reversal of our policy that we are going to compel them——

Mr. THOM. You were asking me how it was to be done. You interrupted me in the middle of my answer.

Mr. ADAMSON. You may go ahead.

Mr. THOM. Congress having done that, having provided a system of national incorporation, that system should provide for a meeting of the stockholders of the company upon due notice and a vote to be taken as to whether or not they would confine their corporation in the future to business in intrastate commerce or would continue to do interstate commerce and would come in under the Federal regulation. If the majority of the stockholders voted for that, then the machinery for the application of that company for Federal charter ought to be provided by the Federal act and the minority stockholders would be bound by that action of the majority, because they took their stock subject to the exercise in the future by Congress of its constitutional function of regulating commerce, which regulation is embraced in this compulsory system of incorporation. There is no condemnation in that; nothing in that whatever except the order passing of the corporation before its charter, as it is in the charter as they want it to be.

Mr. ADAMSON. But I think there is one fundamental trouble in it. Your plan is all pretty enough if it did not involve prohibiting them from going into interstate commerce. Our policy is to compel them to go in and stay in, while your proposition would require a change of that policy and a change of the commerce law. At this time we can make joint routes and rates and force them to do it, and it is our policy to compel every one of them to do it.

Mr. THOM. Yes; and that would be the means and would make your power in that respect much more effective than it is now. You would bring the whole business into interstate commerce under Federal charters at once, subject to the unquestioned regulation of commerce in all the respects you have mentioned. It would enlarge the opportunity for Congress to manage the thing in a homogeneous and comprehensive way, and not in any sense diminish it.

Mr. ADAMSON. Well, I reckon we can not agree on excluding them from interstate commerce as a condition for them to change the form—

Mr. THOM. I think we can agree on the power, and it will be a great source of distress to me, because you are the man to decide it, and I am not.

Mr. ADAMSON. Of course, I do not decide it. There are 20 good lawyers on my committee that manage me entirely.

Mr. THOM. I am putting you in as a Representative, not speaking of you as an individual.

Mr. ADAMSON. I am the humblest servant on the list. Now, Mr. Thom, we exactly agree on the power of Congress, and the power of Congress can make these State corporations to do anything it pleases now without all this trouble and expense of transforming into Federal charters, but I will not continue that discussion with you. I want to ask you now about your plan of administering and regulating, how you will get your corporations changed. I believe you stated that the commerce law and the commission operating under it could not control the Federal corporation any more than it can the State corporation at present?

Mr. THOM. I think the commerce power of the Constitution is sufficient to enable the Interstate Commerce Commission, or any other commission Congress may appoint, to regulate the whole instrument of interstate commerce, even if not incorporated under national law.

Mr. ADAMSON. Then the only other subject I wish to ask you about is your plan of organizing and operating the commission itself. I fully understand, as you do, that the people over the country do not welcome the visits of young lawyers and agents and examiners to hear and pass upon grave questions which they have a right to have a commissioner hear, and I fully agree with you that there ought to be enough commissioners of ability and experience to attend to all this business. To that end you know our committee reported and passed through the House 10 years ago a bill increasing the commission to nine members, with the idea they would divide themselves into sections; that the commissioners would go over different parts of the country and hold hearings, and sections of three could each dispose of cases, unless there was dissatisfaction, when a demand might be made for a consideration en bloc of the entire commission. That was never passed in the Senate, and we kept hammering at it

until last spring our committee reported it to the House and passed it again and sent it to the Senate. It is still hanging there, although I believe all the railroad companies, and the President, also, said it should not be stayed by this resolution. It has not been passed. What I want to ask you is, would it not be easy to conform practically to your idea, substantially to your idea, by so enlarging and subdividing this commission and doing the work?

Mr. THOM. Do you mean that alone without supplementing by what I have suggested?

Mr. ADAMSON. Can you not make it practically answer your suggestions?

Mr. THOM. No, sir; the Interstate Commerce Commission assures me that even if the views which I am advocating should be carried out they would still need those two extra members.

Mr. ADAMSON. I say, enlarge the commission.

Mr. THOM. Wait a second, please, Judge. Nine members of the commission, nine men can not do the work.

Mr. ADAMSON. Then why do you not make it 12 or 15?

Mr. THOM. Because I think the people of this country greatly prefer to have some commissioners resident in their own localities.

Mr. ADAMSON. Can you not select them from different parts of the country?

Mr. THOM. Then they would all be residents in Washington. So far as I am concerned—I am speaking now of the selfish interests of the railroad, not my view or what is good for the country—so far as the selfish interests of the railroads go, of course, those selfish interests would just as well be protected by a commission resident in Washington; but that does not meet the public demand. The public demand is for the Government to understand local conditions. And this commission here, if it consisted of 30 members, sending out agencies from time to time to different parts of the country, would all the time be felt by the people at large as having men visit them that are not acquainted with their local conditions.

Now, my idea is that you gentlemen have got to take—it does not make any difference what view I take—but you gentlemen have got to take a comprehensive view of the needs, the sensibilities, and the views of the people of this country. I believe one of the dearest things which they have is that their Government shall not be a stranger to them; then, it must be brought into an intimate and adequate knowledge of their real conditions.

This idea of regional commissions, of high men appointed by the President and confirmed by the Senate, of men paid in a way to attract the best service to the Government, is to bring to the doors of the people of this country in the various sections the Government that shall pass upon their needs.

Mr. ADAMSON. I should like to be permitted to uncouple the last strong and beautiful sentence of yours and attach the part so beautifully descriptive of home government as against your proposition to transfer the corporations from the States to the Federal Government and the regulation of rates from the States to the Federal Government.

Mr. THOM. Well, Judge, I am very confident that if you attach them they will look like brothers. They are part of a whole and

comprehensive and consistent scheme, as it appears to me. Here we have got this thing of commission that is not a State affair. In the interests of the whole people it is necessary to be without territorial limitations; it is a way they have learned to do and that they want to do business. The people in my State want to get to the markets of another State; they do not want to get to the markets of my own State, it may be. It may be that we have not got any markets that are sufficiently attractive, so that commerce has found it necessary to pass over State lines without any reference to their being there. The commerce is a thing of nation-wide or world-wide extent and importance.

Now, that is one of the things. The way to regulate that, recognizing that it does not halt at State lines but goes over great transportation movements that are not confined by State lines, and yet understanding at the same time the needs of the people, are the two things to be recognized. One we do by recognizing the fact that the movement of commerce is not confined by State lines, and the other is to put the regulating body close to the people.

Mr. ADAMSON. I think your optimism and admiration for your proposed system is largely justified in your own case, so far as I know, by the practice of your own road. I must say that, above any other railroad that I know, so far as I have observed, the Southern Road has accommodated the local necessities, stopped their good trains, let the people ride, and treated them fairly; but your road does not run all over the United States. And I just want to ask you if, under your changed system, excluding Federal regulations and Federal incorporations, what do those local people feel that they can do if you whiz your transcontinental trains through the towns without stopping and give them a local passenger train that leaves before day in the morning and after dark at night—that does not look much better. They believe they will get a complete redress as opposed to local authority.

Mr. THOM. I thought you were against local authority?

Mr. ADAMSON. No, sir; not for local affairs. I want Congress to do what the Constitution says Congress is to do, and the States to do what the Constitution says the States shall do—not because I am crazy about State rights or daft on State rights, but because the Constitution fixes it that way.

Mr. THOM. Why not have some of the representatives of the regulating power resident in each community?

Mr. ADAMSON. The State commission lives there.

Mr. THOM. I understand that; but that is based upon the theory that the commissioners ought to be regulated by State lines.

Mr. ADAMSON. Not at all; not local commissioners.

Mr. THOM. If we differ on that we differ on the fundamentals.

Mr. ADAMSON. Not local commissioners. It is more important for the people in remote counties to get to their nearest town than it is for them to see a load of drummers go through from Boston to San Francisco; and they are the fellows you have to deal with; they are the fellows you get your verdicts from if you get any at all; they are the people who first consented for you to build your railroads; they are the people who thought there was some obligation to accommodate and respect them; and they are the people that will be

dissatisfied unless you inspire them with confidence about how their grievances are going to be redressed. If one of them is put off a train or has a pet cow or pig killed, where is he going to be redressed? Now he gets it at home.

Mr. THOM. He will get it at home under any suggestions I have made to you.

Mr. ADAMSON. You are going to propose, then, that you can sue all these Federal corporations through the State courts at home?

Mr. THOM. Yes, sir.

Mr. ADAMSON. And not be removed to distant Federal courts?

Mr. THOM. Undoubtedly; just have those jurisdictions where they are now. I think, instead of there being a fundamental difference between what you are saying and I am saying, it relates only to the line of how much police authority is under the wisdom of Congress preserved.

Mr. ADAMSON. No; there is a fundamental difference.

Mr. THOM. My proposition is where a State exercises a power which has no substantial effect beyond its own limits it ought to continue it, but where it exercises a power the substantial effect of which is to put its own laws on its neighboring States it ought not to.

Mr. ADAMSON. There is a fundamental difference in this: Representative government means that the local officers are chosen by local people. My proposition is that the local people choose the local administrators and the local authorities govern the local communities. You are proposing that a central authority, through a central body, shall govern local as well as general affairs, and from a central authority those local people shall be selected.

Mr. THOM. Only those matters in which the authorities in one State extend themselves across their border and undertake to regulate the affairs of another State—

Mr. ADAMSON. Now, how many traffic divisions did you say there are—four or five?

Mr. THOM. There are three classification territories.

Mr. ADAMSON. Only three?

Mr. THOM. Three classification territories.

Mr. ADAMSON. You say there ought to be more commissioners than territories?

Mr. THOM. More regions.

Mr. ADAMSON. How many in all?

Mr. THOM. I have not gone into that, but I think Congress should have quite a number.

Mr. ADAMSON. Just give me an arbitrary figure for speculative purposes.

Mr. THOM. An arbitrary figure would have no value, Judge. My own idea is—

Mr. ADAMSON. I am talking about a supposition case—say how many—6 or 7 or 10?

Mr. THOM. Suppose we say 15.

Mr. ADAMSON. Say 15, then. If there are 15 places where local men ought to work, or a foreign man ought to be sent to the local place to work, or a local man sent to a central authority to work, and you then add enough to stay in town and hold the fort and attend to general business, it does seem to me you ought to select

all 15 from all over the country and let them tend to the business in that central section.

Mr. THOM. I do not believe that would be satisfactory to the people. My own judgment is that the fundamental reason for having these regional commissioners reside in their communities——

Mr. ADAMSON. But the big trouble you have there——

Mr. THOM. A great many railroad people take your view. They take your view and say "Divide up this commission here and do not have the local men," because some of them think in that way you will get a much more independent judgment. My own judgment is we will have to take the risk of that; that we have got to recognize the demand not only because it exists, but because it has a fundamental justification, for having men that are brought in contact with vital affairs and know them by residing among them.

Mr. ADAMSON. The greatest difficulty you will have, Mr. Thom, in getting your program through is the idea that has been disseminated among the people by those who have been making your arguments, in the papers and elsewhere, about your escaping the appeal—the jurisdiction of 48 different authorities. The idea is prevalent among the people that you are trying to get away from them and run your operations independent of them and in spite of them, and with no responsibility to them, and they do not like that.

Mr. THOM. I hope after my explanation you will help me get that erroneous doctrine out of their minds.

Mr. ADAMSON. I am glad to get that to your mind, because you will confront it everywhere.

Mr. THOM. I am protesting against the suggestion that this is an attempt to concentrate everything in Washington, and I am telling you the counter view I take on that subject, that it is desirable from every standpoint; from the standpoint of meeting the views of the American public and from the standpoint of meeting a condition which probably demands knowledge on the part of those who govern, of the conditions of those who are governed, to put these regional commissions close to the people by making them reside in the various regions where they have jurisdiction.

Mr. ADAMSON. I believe the people are not only willing but desire and demand that the railroads have revenue enough to put themselves in a condition of equipment and safety to do the business of the people promptly and safely, but they are suspicious and they are afraid that they will not be locally respected and protected in their local rights. That is what you have to combat.

Mr. THOM. The President in making his nominations, and the Senate in confirming them ought to safeguard that point.

Mr. ADAMSON. Well, all the President is talking about is about helping you get money, and you are not in such straits now as then. Is not your business more prosperous now?

Mr. THOM. Undoubtedly it is more prosperous now, but the mistake of fixing your standard of regulation by prosperous years, instead of taking into consideration the average conditions that affect these railroads, will be mistakes which will lead to ruin.

Mr. ADAMSON. Would it not be advisable to continue your case, and not argue it during days of prosperity, and wait for lean years, to press it on the people?

Mr. THOM. Not at all. Bear in mind not one cent is coming to us from this investigation, if we get all we think we ought to have. This is not a rate case. This is not a case where you are passing on whether we need more or less money. It is a question whether or not you will protect your systems of regulation so that they will reflect the needs at all times, prosperous as well as unprosperous. If there are fundamental conditions that obtain in this matter that are objectionable in this matter, there is no more reason for removing them in prosperous years than there is for removing them in lean years. The question for you gentlemen to consider is whether there is anything in the tendencies of these conditions as they are now to really affect the future of transportation in America. Are the margins being absorbed unduly? Are there too much fixed charges going on the property? Is the margin that is left sufficient to guarantee the American public adequate facilities? You must judge that in prosperous times as well as in lean times, and if that is a fact the man who really foresees and provides for the needs of the future is the statesman. The man who does that must take note of that now as well as in future times.

Mr. ADAMSON. In prosperous times the atmosphere is not as favorable for considering appropriations for financial relief as in times of pressure.

Mr. THOM. No financial relief is asked for. We are asking simply for perfected conditions of governmental regulation, which will deal with times when financial needs must be provided for and will not deal with them when financial needs are not to be provided for.

Mr. ADAMSON. But a very able part of your speech was addressed to the difficulty of securing ample capital. I understand you want to be placed by law where you can secure capital.

Mr. THOM. Undoubtedly; but ought we to wait until we are in a position of disaster to provide against this possibility, or should we provide in time to avert disaster?

Mr. ADAMSON. I suppose you do not care to be cross-examined about Government ownership?

Mr. THOM. No, sir; I do not, personally—well, I should just as soon be examined on that as anything else, but I do not think my views are of any special value to the committee.

Mr. ADAMSON. I thought I might disprove a thing by examining you on that.

Mr. THOM. I do not believe in Government ownership.

Mr. ADAMSON. That was the idea I had in considering examining you. I wanted to get your testimony on that and your objections to it.

Mr. THOM. My objection is pretty much from the public standpoint.

Mr. ADAMSON. I thank you for your courteous responses to my numerous questions, and I will relieve you from further questions.

Mr. THOM. That is what I am here for. I will give you all the information I have got.

The CHAIRMAN. Mr. Robinson, will you proceed?

Senator ROBINSON. I think it will require me only a few minutes to submit to Judge Thom such questions as are necessary to clarify my mind concerning the very forceful and able statement which he has made to the joint subcommittee.

Judge Thom, in your address you discussed the decline of railway credits. About when did that condition first manifest itself?

Mr. THOM. I do not know that I can speak with any accuracy about that, or in any way that will not need some verification, but my understanding is that railway credit commenced distinctly to decline in 1910.

Senator ROBINSON. Did I understand you correctly to charge this decline of credit principally against governmental action in over-regulating through State or National authorities or both?

Mr. THOM. I am told that the activities of all these commissions did not appear much prior to that time. Now, we, in the South, have been so long familiar with State regulating bodies that my inclination would have been to put the time much behind the point I mentioned, but there seems to have been, in other sections of the country, a delayed application of these varying systems of regulation, and they perhaps seem to have come to a climax somewhere about the year 1910. In that year, too, there was an increase of \$50,000,000 in wages. There was a determination that railway revenues could not be increased in the way then proposed and in a way that a great many investors in railway securities thought they ought to be increased, and the lesson was taught somehow, in some way, that both revenues and expenses of the carriers were beyond the control of the owners.

Senator ROBINSON. Was there also a falling off in the railway earnings in 1910?

Mr. THOM. I can not recall.

Senator ROBINSON. Do you think, in accounting for this decline in railway credit, in your statements, you have given due prominence to the mistakes and mismanagements on the part of the railway managers and financiers?

Mr. THOM. I do not know how much attention should be given to that. I have no doubt it had a marked cumulative effect.

Senator ROBINSON. I believe you stated, if I understood you correctly, that these mistakes—

Mr. THOM. One minute, if you will permit me to say this in respect to that, at the same time even the charges about that did not affect 10 per cent of the mileage of this country. It was a very small proportion, but it was made a great deal of in the public press.

Senator ROBINSON. It would not be necessary that such charges should affect the entire mileage or even a large part of the mileage in order to impair the credit if the system was believed to be more or less general, would it?

Mr. THOM. Not if it was believed, no; but I do not understand even that it was charged that it was more or less general. I do not understand it extended to more than 10 per cent, and one of the great difficulties in railroad management is that the restrictive provisions of regulation intended to deal with this evil to which you allude but was expressly in the hands of people who never were supposed in the most remote degree to be subject to the charge.

Senator ROBINSON. These alleged mistakes and mismanagements, or the public conception of them, were largely responsible for bringing about the era of governmental regulations, were they not?

Mr. THOM. I think it very likely—very likely.

Senator ROBINSON. Prior to the basic act of Congress to regulate commerce, known as the act of 1887, Congress had never attempted in any comprehensive way to exercise its power to regulate commerce, had it?

Mr. THOM. It had not.

Senator ROBINSON. Are you familiar with, or have you made any study of, railroad credit generally, and the conditions concerning railroad credit generally, during the period of nonregulation—that is, prior to the act of 1887?

Mr. THOM. Well, when you ask me if I have made any study, I assume you mean some special study outside of my general knowledge of conditions?

Senator ROBINSON. That is what I mean.

Mr. THOM. No, sir; I have made none outside of my general knowledge of conditions. I knew at that time, and for some years afterwards, it was easy enough to get money to go into new railroad enterprises.

Senator ROBINSON. Increased Federal regulation is now regarded by you as necessary in some respects for the restoration or the establishment on a securer basis of railroad credit, if I understand you?

Mr. THOM. That is correct.

Senator ROBINSON. In your opinion, if there had never been any attempt at Government regulation, either upon the part of the Federal Government or the States—that is, if all conditions with regard to regulation which prevailed prior to 1887 had continued to the present—would railroad credit now be on a better and securer basis than it is?

Mr. THOM. Well, of course, that is a mere matter of opinion.

Senator ROBINSON. I understand that.

Mr. THOM. But at the same time I am a great believer in regulation. I think that great benefits have come from regulation, and that a great many more benefits can come from perfected regulation. I believe that the railroads, within the limits that they have been constructed, and the public are better off for having adopted a system of regulation. Now, the reason I say within limits is this: We must realize that the railroads of this country were built by people who expected in some way to get very handsome returns from their investments. Their hope in that respect was natural—benefited by bonuses of stock—and they expected to be able to work their enterprises up until the stock became worth something. They would not have built them if they had not had that hope. We would not have had railroads if it had not been for that hope. Now, if here comes along Government regulation and puts an end to that hope and has to deal with the situation that is created by that change of condition, and having done that it makes a tremendous problem as to how venturous capital is still to be brought into this field of development.

Senator ROBINSON. Now, let me ask you a question in that connection. You made it quite clear in your statement, to my mind, that the initiative of railroad construction in the United States was upon the part of more or less speculative investors. Do you think it was desirable that that condition should have continued indefinitely?

Mr. THOM. I do not think it was possible to continue it indefinitely, Senator.

Senator ROBINSON. And that the era of regulation was inevitable?

Mr. THOM. I think so.

Senator ROBINSON. Now, you have said that the existing system of regulation has had for its main purpose the correction of abuses and the elimination of evils of railroad management.

Mr. THOM. Yes, sir.

Senator ROBINSON. That is the inevitable result of the conditions—

Mr. THOM. Of all these abuses which have arisen; yes, sir.

Senator ROBINSON. The system of regulation that now prevails is the product of a slow growth which has occurred in spite of the opposition of railroads, I believe you stated?

Mr. THOM. That is my judgment.

Senator ROBINSON. I think that is correct. Do you regard the act to regulate commerce—that is, the act of 1887 that we have already mentioned—as largely a punitive corrective measure, and not as a constructive measure?

Mr. THOM. Yes, sir. I think, Senator, that is not only so, but in obedience to the spirit of resentment throughout of the abuses which did exist, that has been demonstrated with the idea of giving the very lowest possible rate and of surrounding the management of the railroads with the greatest possible restrictions.

Senator ROBINSON. In making that statement—

Mr. THOM. Just one second, I had not quite finished my sentence.

Senator ROBINSON. I beg your pardon.

Mr. THOM. And that there has been a tremendous distrust on the part of a large portion of the public in the management of railroads. It has been considered necessary to surround them with bayonets, and in order to make them keep step just prick them in the back and around. Of course, there can be no enduring system of that kind. The time must come when the character of the men in charge of these properties must be recognized as high as any other business or the system of private ownership and private management must go. We say that time has come. We ask you gentlemen to examine whether or not the time has not now come when you can deal with this business as you do with any other business, on the assumption—on the recognition, I should say, rather than assumption—of the fact that railroad management in this country is, as a rule, honest and upright and patriotic. Now, when that time does come—and I say it has come now—you gentlemen are considering whether it has come or not—when that time does come then we think that the time has come for you while retaining all of your corrective powers and processes, to add the constructive and helpful features to this system of regulation which will insure for the future the sufficiency of these facilities; and I want to say right there, if you will permit me one more remark—that granting all that can have been said about abuses existing in the past, the mere existence of these abuses, of looking at them and feeling resentment against them, detecting them and punishing them, will not provide for what the public needs in the future as to its facilities. If they were great enough upon their mere removal to put the railroads in a condition of furnishing all these facilities that are needed in the future, that would be one thing, but if you remove them all and still have an incapacitated system, why you have not done what the public needs require.

Now, our proposition is, first, that the great mass of these abuses have been removed; that if they exist at all it is only in sporadic cases, but certainly as to those that are not removed the retention of your corrective powers will be sufficient to deal with them, and when they are all removed there still are conditions of incapacity created which will prevent the railroads from being able to do their real function for the public.

Now we are asking you to see to it that when you, by the retention of your corrective machinery and processes, get rid of them all you do not leave an anæmic and incapacitated system of transportation, but that you will deal in a comprehensive and helpful way with the needs of the future.

Senator ROBINSON. You have referred frequently during your statement to the distrust in the public mind occasioned by the alleged mismanagement on the part of railway managers and financiers. Does that condition, in your opinion, still exist?

Mr. THOM. I do not think so. Do you mean the public mind?

Senator ROBINSON. In the public mind.

Mr. THOM. To nothing like the same extent that it did. I think the public mind has been greatly modified; that is, the public judgment of this matter has been greatly modified, and they are looking to-day on the situation with different eyes.

Senator ROBINSON. You regard it as true, do you not, that that condition has been perpetuated by the policy of the railroads themselves, first, in opposing all regulation, and, second, in failing to acquiesce in the attempts of Congress to regulate properly. For instance, after the passage of the act of 1887, the general policy of the railroads was to test every inch of ground of regulation contained in that act, was it not?

Mr. THOM. Yes, sir.

Senator ROBINSON. And that course has been pursued largely with regard to other subsequent acts of Congress enacted in the exercise of its power to regulate commerce?

Mr. THOM. That tended to keep the country divided into two views; one was the public insisting that these regulations should be made effective, and the other side fighting it, and the result of that was necessarily to put the passionate views of the victorious party on the other side.

Senator ROBINSON. That condition, I believe you have correctly stated, has been modified, to say the least of it?

Mr. THOM. Yes, sir.

Senator ROBINSON. The railroads have changed their attitude entirely on the subject of regulation?

Mr. THOM. They have.

Senator ROBINSON. And in part, as a result of that as well as the other conditions, the public attitude toward the railroads has changed?

Mr. THOM. Yes, sir. We are getting into a better condition of affairs.

Senator ROBINSON. And if that diagnosis of the situation is an accurate one, and I think it is approximately so, it means a very gratifying condition. Now, the second general exercise by Congress of its power to regulate commerce was, I believe, embraced in the so-called Sherman Antitrust Act, was it not, of 1890?

Mr. THOM. Well, at the time that was passed, Senator, it was not supposed to apply to railroads.

Senator ROBINSON. I was going to ask you about that. As a matter of fact that was the second comprehensive attempt on the part of Congress to exercise its regulatory power over commerce. Was that act generally regarded as applicable to railroads when it was passed?

Mr. THOM. No, sir; it was not.

Senator ROBINSON. What, in your opinion, are the public benefits resulting from the application of the Sherman antitrust law to the railroads under the system of governmental regulation such as exists now?

Mr. THOM. I do not think that it has any benefit, Senator, for the reason that there are two points at which competition may benefit the public. One is in respect of charges, the other is in respect of facilities. Now, of course, it can not have any effect in respect of charges, because those charges are Government made for both lines. Now, as to competition of facilities, I believe that the natural conditions of every management insure that just as much as if there was absolute competition all around. You can not imagine the efforts that the management of a single system has to make to keep down the rivalry between the managers of various divisions of that property in order to make a good showing for themselves. That has been at times a serious difficulty of railroad management. Here is a man who wants to make a splendid record for his own division, and to get his trains over quickly and get them over cheaply, and rise up above the general mass as a successful railroad operator. Now, at times he has done that to such an extent that he has not regarded the next division at all. He has sacrificed the through movement to the success of the management of his own division, and that comes from a very human impulse, for him to demonstrate his own efficiency and get the advantage of it.

Now, therefore, I think that that applies also to the management of two railroads commonly owned but doing a competitive business as to facilities and all that. Each one wants to make a record for himself, and therefore I do not believe that the public has been in much danger in respect to facilities; secondly, I feel that I can answer your question quite comprehensively, that when you regulate railroads you put them in a class where the antitrust acts become of little value to the public, and that is certainly true when you recognize that your power of regulation would extend to the only possibly uncovered feature, and that is facilities.

Senator ROBINSON. Then, if I understand you correctly, in your opinion the public interest would not suffer if the antitrust acts were made inapplicable to railroads?

Mr. THOM. I don't think it would.

Senator ROBINSON. And railroad operations might be facilitated—is that your idea?

Mr. THOM. I think so. There are certainly some features of it where this happens, as I understand it. I myself went before the Judiciary Committee, or the subcommittee of the Judiciary Committee of the House of Representatives, when they had the Clayton bill under consideration and presented the question of the desirability of the law permitting the traffic managers of these various railroads to get together and to discuss the terms on which commerce should

move. That committee referred that question to the Interstate Commerce Commission in writing, and the Interstate Commerce Commission wrote a letter indorsing that view and drew a provision, which was put in the Clayton bill as it left the House of Representatives. When it got to the Senate the Senate Committee on the Judiciary, of which I believe there is at least one gentleman here present, did not hold any hearings and we could not make our presentment, and that went out so quick there that it made us dizzy, but we feel it went out without having the merits of it presented. The committee had a short time—they had to act very quickly—and they did not have any public hearings on that bill at all; but, at any rate, the point I am making is that the practical necessity of having these traffic managers meet and agree upon their joint rates and their through routes and agree upon the terms upon which they will carry traffic on their roads so as to make it harmonious with and not discriminatory against the rates on some other roads is an essential of the railroad business if equality is to be created, and the public interest can be safeguarded if you permit the Interstate Commerce Commission—make a report to the Interstate Commerce Commission of whatever is done and enable them to set it aside.

Senator ROBINSON. I presume it is your thought that if the suggestions which you have made with regard to increasing the authority of the Interstate Commerce Commission over the control of rates is enacted into law that there would still be less necessity for the application of the antitrust law as to railroad operations?

Mr. THOM. Yes, sir. Now, Senator, just let me get this idea in there. When we recognize that rates, wherever they exist, may discriminate against other rates, no matter whether they are interstate or outside of the State, and that rates interstate may discriminate against the rates outside of the State, we have gotten to a point where there must be an independent authority to determine that question of discrimination. We can not let one of the parties who is adversely affecting the interest of another party across the border determine the question of discrimination, because that is the power of discrimination instead of the judicial determination of the question. We can not have a question of discrimination determined except by some impartial authority.

Senator ROBINSON. I want to ask you some questions a little later about the question of increasing—the proposition of increasing the authority of the Interstate Commerce Commission touching the matter of rate making; but now I want to go back just a moment to the subject of the impairment of credit and the restoration of it. You have said that the objectionable conditions which have existed in the management of some railroads in the past have, in your opinion, practically been eliminated, I believe.

Mr. THOM. I think they have been almost entirely eliminated. The condition of public sentiment in the railroad world has been in the direction of such elimination.

Senator ROBINSON. In your judgment, did such disclosures as were connected with the New Haven Railroad, along about the time you say this impairment of credit began, have any emphatic influence in the impairment of credit?

Mr. THOM. I think it did have a most adverse effect, Senator, and I will tell you another thing it had. It had the effect of helping to create the public sentiment among the railroads themselves that such things as that must cease.

Senator ROBINSON. I agree with you. Now, I want to ask you further along that line whether or not the practice has existed among many, or at least some railroads, of the officers of the railroads organizing corporations, independent of the railroads themselves, of which they, the officers of the railroad corporation, became the principal stockholders, and of buying and selling through those subsidiary corporations the supplies which were purchased by the railroads. Has that condition existed?

Mr. THOM. Has it existed?

Senator ROBINSON. Yes.

Mr. THOM. I have heard of it, and I believe it has.

Senator ROBINSON. Do you not think that tended to increase the distrust occasioned in the minds of railway investors, by other mismanagements in railroad affairs?

Mr. THOM. I do; but I think this, Senator——

Senator ROBINSON. Do you think it would be possible to put railroad credits upon a secure basis without in some way eliminating this practice, whereby, or through which, railroad officers who, under every principle of law are trustees, are in the habit of buying and selling to themselves through corporations that they have organized and thus making enormous profits out of their trusts?

Mr. THOM. Senator, the difficulty about our situation there is this: That did exist, but that has likewise been practically eliminated, and we are attempting—it takes a long time, you know, for law to catch up with an abuse.

Senator ROBINSON. That is true.

Mr. THOM. I think that the law is about 10 years behind that abuse.

Senator ROBINSON. You think that that condition has been abolished for 10 years?

Mr. THOM. I think it has been abolished for a long time. I said 10 years at random. I did not mean anything especially, except that it has been for some time abolished.

Senator ROBINSON. Take the case we had a while ago of the New Haven Railroad.

Mr. THOM. Those things—I do not know when they existed, and, as I say, I put the period at 10 years simply as an illustration, but my belief is it is abolished. I talked with the President in regard to section 10 of the Clayton Act. That was drawn in such a way as practically to break up the railroad systems of the country, and I told him, in asking his assistance in having that act suspended until Congress could think of it again—I told him that I was thoroughly in harmony with the soundness of the principle for which he stood; that a railroad officer in and dealing for the railroad, whether he be a director or other officer, should not be allowed to sit on both sides of the table, and some way should be found, if the public thought at all that that situation now continues, of preventing it, and that I, as far as my powers lie, would assist in suggesting a means of preventing it, and I hold myself open to that to-day. I believe that that is a thoroughly unjustifiable position for the trustee of a railroad—and an officer is a trustee and a director is a trustee—to be dealing for his

own benefit with the contracts of the railroads. And we, speaking of it now as a railroad fraternity question, we are all agreed on that subject.

Senator ROBINSON. And such practice could unquestionably startle cautious railway investors?

Mr. THOM. Undoubtedly.

Senator ROBINSON. For all investors are cautious?

Mr. THOM. Undoubtedly.

Senator ROBINSON. I agree with you.

Now, you have in the course of your statement referred to the Pennsylvania Railroad as a model system?

Mr. THOM. I did not know I had, but I will. I think it is.

Senator ROBINSON. You did, as I understood you, and I do not wish to be understood as implying any attack upon the Pennsylvania Railroad system, but, as touching your statement made just a moment ago, that these objectionable practices on the part of railroad officers of profiting through the organization of associate corporations to sell supplies to the railroads of which they are officers has been abolished, I want to ask you if you know anything about the alleged printing company which does the printing for the Pennsylvania Railroad?

Mr. THOM. Not a thing. I never heard of it.

Senator ROBINSON. You do not know about that company, or whether it is still in existence, and the salaries of—

Mr. THOM. No; I have not. I know this: Of course, I am conversant with the investigation that was made some years ago of profits that various officers of the Pennsylvania Railroad were alleged to have made out of contracts with the company, or out of commodities along its way, that were hauled by the company, but that is the full extent. I have never heard of the printing part of it to which you refer.

Senator ROBINSON. It is still in existence and I will not ask you any further questions concerning that, as you say you know nothing about it. Now, you also referred, and I think very aptly, to the pernicious influence of politics in the matter of the regulation of railroads, and you made the statement that the railroads themselves were not in politics and no railroad you know of had been in politics.

Mr. THOM. No; I did not say that.

Senator ROBINSON. Did you not?

Mr. THOM. No; I said no railroad with which I am acquainted is in politics. I did not say I did not know of any one having been in politics.

Senator ROBINSON. Well, I misunderstood you, then.

Mr. THOM. Oh, no.

Senator ROBINSON. I accept, as an abbreviation of this examination in that particular, your statement now.

Mr. THOM. Senator, let me tell you one thing before you get me away from that. I know railroads which are in politics, some more than others, but I have, since I had any responsibility of the general officers—have stood for, with the entire sympathy of the managers—the chief managers of the companies with which I am particularly connected—have stood for the elimination of that, and their face has been set against it. You can not imagine, when a railroad company has been in politics, the difficulty of getting out. Men in the highest position will come and insist on cooperation in political matters, and

you have the greatest difficulty. Sometimes you have to accept a great disaster as the penalty for getting out, but railroads have accepted that, speaking generally, in this country. Now, I do not know—there may be still some in politics to a limited degree.

Senator ROBINSON. I referred in my examination of you to this subject solely because of your mentioning it in your argument. I agree with you that in so far as it is possible to eliminate politics from any human affairs, that politics ought to be eliminated from the regulation of railroads, and I think you agree with me that the railroads, if that is done, ought to do out of politics. Perhaps they may have been partially responsible for some of the political influences that have been exerted concerning them by reason of their activities in politics. Take, for instance, the case of the Louisville & Nashville. I suppose you are familiar with the investigation that has recently proceeded before the Interstate Commerce Commission?

Mr. THOM. In a general way; yes.

Senator ROBINSON. I do not care to go into the subject in detail further than to say it illustrates the embarrassments that accrue to a railroad management after it once enters politics, by reason of the importunities of politicians, and that investigation indicated that the Louisville & Nashville and other railroads operating in that section of the Union were, up until quite recently, as late as 1913, and perhaps 1914, very actively engaged in politics. I suppose you are familiar with the case of two southern railway presidents—I do not mean presidents of the Southern Railway, but two presidents of railroads in the South—who held a conference and who in humorous correspondence subsequently styled each other as Pizarro and Cortez and discussed how they should divide the new world?

Mr. THOM. That was very humorous. I have seen it, but that was many years ago, almost as long ago as the time when Cortez and Pizarro did exist.

Senator ROBINSON. It is long since you were connected with the Southern Railroad. It was in the year 1906.

Mr. THOM. That was some years ago; well, that is a long time ago.

Senator ROBINSON. Yes; but I do not think you can refer to that as ancient history in view of the fact that the railroad which was represented by one of those presidents is shown in the investigation of the L. & N. by the Interstate Commerce Commission to have contributed enormous sums to political campaigns in 1913. I do not think you can say this is purely a matter of ancient history. I make no point of that except to emphasize the fact that the fault, so far as political activity is concerned, is not all upon the part of the politicians; that the railroads may have invited or promoted the condition by their activities in politics.

Mr. THOM. You must have misunderstood me if you thought I contended to the contrary. It is a system which is indefensible. It acted in this way. Here is a railroad in politics that all the time was behind one set of men and all the time opposed to another set of men, and after a while the other set of men won and then they came in there with their tomahawks out, you know, and with all their paint and feathers, and determined to destroy the thing that had been after them all those years, and there is the illustration of the spirit with which the railroads have been dealt with, because many

of the men who have dealt with them have dealt with them with their wounds fresh from the attacks the railroads made on them. Now, I do not mean to say—let me make this clear—I do not mean to say that the railroad movement out of politics will appeal to every company at the present day and to the same extent. You know very well that you might find some radicals even in the Senate. We meet some radicals even in the railroad life. We meet people in the railroad world that we can not approve, because they take an entirely different view of the policies which ought to be adopted from those that we take, and therefore you find that when a tendency starts it will appeal to men of different temperaments and different views of public policy at different times, but what has happened is that the men who were most persistent in holding on to that have become early exception or belated adherents of this view of getting out of politics. But some of them are belated at the same time the public sentiment of the railroad world is against being in politics, and the practice of the railroad world, dealing comprehensively, possibly with some exceptions of belated gentlemen, is to be out of politics.

Senator ROBINSON. I think we agree that in any event politics ought to be taken out of the railroads and the railroads out of politics as far as can be done?

Mr. THOM. We agree on that, but we will say this, that for the railroads to be incapacitated to take any position in politics—it is a most lamentable thing for the public if they are to be hacked to pieces by the other side being all the time in politics and trying to get into public office by abusing them.

Senator ROBINSON. You have contrasted the regulation of national banks with the regulation of railroads and pointed out very accurately that railroads did not begin with regulation, whereas the national banks did. Here is another contrast that I think we may agree upon between the regulation of national banks and railroads, the Government control of national banks is very much more rigid than it is of railroads, is it not?

Mr. THOM. I really have not those features in mind.

Senator ROBINSON. If you have not I do not care to heckle you about it.

Mr. THOM. I say my impression was there was a liability on the national banks that, as I understood it, railroads do not possess. What I mean is of their having the perfect power of initiative, or a much larger power of initiative.

Senator ROBINSON. In so far as regulation is concerned, the Government power as exercised is much more rigid as to the banks than it is as touching the railroads, is it not?

Mr. THOM. I do not so understand it. You may be right.

Senator ROBINSON. Is there not another distinction in the organization and operation of these classes of corporations? In the national banks the officers and managing agents usually are the principal stockholders of the banks themselves, are they not; whereas is that true under the present system of railroad management?

Mr. THOM. I do not think it is true of either.

Senator ROBINSON. Do you not?

Mr. THOM. No; the rates of the national banks are not subject to such regulation as the rates of railroads.

Senator ROBINSON. I do not think you understood my last question.

Mr. THOM. I was answering your former one.

Senator ROBINSON. But there is an absolute maximum limit fixed by law nearly everywhere touching the interest that shall be charged, but I was not speaking of that now. In the national banks the officers of the banks and the managing agents, the men who control the policy of the banks, are the men who own the bank largely, are they not?

Mr. THOM. I think that very frequently is the case.

Senator ROBINSON. That is not true as to railroads, is it?

Mr. THOM. No, sir.

Senator ROBINSON. By way of illustration, how much stock do you know—I do not mean to pry into private business, and if you have any objection to answering my question you need not do so—but just by way of illustration, how much stock has Mr. Fairfax Harrison in the Southern Railroad?

Mr. THOM. I have no idea. The necessity, however, for selecting railroad managers without reference to their stock ownership comes from the necessity of putting the very best man in charge of these properties, and I do not believe, since the difficulties which you alluded to a moment ago of these private arrangements of profit have disappeared—I do not believe the railroads suffer from that. Ordinarily now it is one of the most magnificent instances of our American system to observe the way men in railroad life have come up from the lowest beginnings. I have in my mind one man who is now controller of one of the large railroad systems and is considered, perhaps, the most eminent accountant in this country, who never went to school until he was 12 years of age, and commenced as a messenger boy in a Virginia station. I know of a vice president and general manager who has come up all the way from the lowest grades of railroad service, and these men have come into these high positions because of special personal ability they exhibited through long years of service.

Senator ROBINSON. While all that is true—and I agree with you and rejoice in it as a fact—it is also true that this management loses something that is usually associated with ownership and a real monetary interest in the control of large business concerns, does it not?

Mr. THOM. The public does not lose. Let me give you an illustration of what I mean.

Senator ROBINSON. I just asked you this question, Do you think—

Mr. THOM. I know; but this is a valuable illustration I wish to present. I was present at a stockholders' meeting a short time ago of a southern railroad company, as to whose president you asked me how much stock he had. It has been since the fall of 1914 since there has been any dividend on preferred stock of the Southern road. The Southern road has adopted the policy of having mass meetings of stockholders, so as to have criticisms of the management, and when we went into this meeting last October there got to be a very considerable pressure for dividends, and a gentleman, who was a preacher, got up and demanded dividends, and he said, "This management does not consider the stockholders enough. The first duty of a management is to its stockholders." The president of the

company said, "It must be recognized that the first duty of the management is to the public, and that the duty to the stockholders comes after that." Now, in that matter of consideration for the public as the first duty the management of the railroad loses nothing by not being very heavily interested in the stock.

Senator ROBINSON. Do you know anything about the Railway Investors' League, Mr. Thom?

Mr. THOM. No, sir; I do not.

Senator ROBINSON. I observed an advertisement in the New York American—the date does not appear in the advertisement—of some gentlemen who style themselves the "Railway Investors' League." It is signed by Mr. John Muir, of New York City, as chairman, and a number of other gentlemen, complaining, it seems, that the interests of investors in railway securities is not being safeguarded in this hearing.

Mr. THOM. In this hearing?

Senator ROBINSON. Yes, sir. Some reference is made to a letter sent out by the chairman, indicating some of the matters which the commission would consider and some of the classes of persons from whom the commission would like to hear, and complaint is made that railway investors were not specifically mentioned in that letter. I will hand this to you, and then I think it would be fair to let it go into the record, and I will ask you to just glance over it. Before you examine that, say whether your discussion here has largely been based upon the safeguarding, the fair safeguarding, of the interests of investors in railway securities as a means of strengthening railway credit and thus obtaining adequate and necessary railway facilities.

Mr. THOM. Yes, sir.

Senator ROBINSON. Do you know of any conflict between the rights and interests which you have presented here, and the rights and interests of railway investors?

Mr. THOM. None at all. I have attempted to show, just as you have stated, that the public needs, in its own interest, an adequate railroad credit, and that the only way to protect the public is to do the things that legitimately attract investors. Now, as to this newspaper advertisement to which you have called my attention, I know nothing of it or any of the people. I have heard Mr. Muir's name mentioned; I do not know him. I never heard of this advertisement, and I never heard of this move.

Senator ROBINSON. I know Mr. Muir. He is a very prominent citizen.

Mr. THOM. Any man has a right to complain of anything in this country, and I suppose Mr. Muir is simply exercising that prerogative.

Senator ROBINSON. I will state that I have read the advertisement, and my construction of it is that it is simply an invitation or a request to railway investors to effect an organization for the purpose of presenting their views and interests to this joint subcommittee, and of escaping what they may regard as unwise and unfair legislation affecting their interests resulting from the investigation.

Mr. THOM. If that is the purpose of it, I suppose that is legitimate, for anybody to come here and present his views.

Senator ROBINSON. I do not mean to question the legitimacy of it.

Mr. THOM. What is that?

Senator ROBINSON. I do not think you can infer from anything I said that I was questioning the legitimacy of it.

Mr. THOM. No. I have not read the advertisement and I do not know what it is.

Senator ROBINSON. My interest in the matter is to see that all parties in interest are fairly treated, and I called it to your attention, thinking perhaps that you would be able to throw some light upon it.

Mr. THOM. No; I am not.

Senator ROBINSON. You know nothing about it?

Mr. THOM. No; I know nothing about it.

The CHAIRMAN. Mr. Robinson, would you permit me, in connection with that advertisement, to insert right here in the record the invitation which was sent out?

Senator ROBINSON. Yes.

The CHAIRMAN. I will just read one sentence from that invitation.

Senator ROBINSON. I will state that I think the invitation embraces the class whose interests are alleged to be involved in that advertisement, and I will be glad to have you make the insertion, Mr. Chairman.

The CHAIRMAN. I will state, in the first place, that the committee will, of course, welcome the representatives of any organization of investors who wish to appear before it, and the purpose of the invitation was to cover such organizations, if they existed. I did not know that any existed. Now, the purpose of the committee is stated in this sentence:

The purpose of the committee is to hear regarding Government regulation and Government ownership the opinions of economists and publicists of eminence, representatives of the Interstate Commerce Commission, the National Association of State Railroad Commissioners, State railroad and public utility commissions, representatives of the railroad executives and labor organizations, representatives of farming organizations, and farmers, shippers, and bankers, representatives of chambers of commerce, and other important business and industrial organizations.

I put in the term "bankers" there, supposing that, as a rule, the investment bankers might be regarded as representatives of the investors. We all know that there are numerous investment bankers in the country, upon whose advice customers make investments. I saw that advertisement, and if I had seen it before the invitation was sent out I should have included that organization in the invitation.

Mr. ADAMSON. And they are now invited.

The CHAIRMAN. Yes; They are now invited. Insert this invitation in the record, with the advertisement referred to.

(The "invitation" above referred to is printed in full, as follows:)

[TENTATIVE PRINT—SUBJECT TO REVISION.]

Congress of the United States, Joint Committee on Interstate Commerce, room 326, Senate Office Building, Washington, D. C.

[Senate: Francis G. Newlands, Nevada, chairman; Joseph T. Robinson, Arkansas; Oscar W. Underwood, Alabama; Albert B. Cummins, Iowa; Frank B. Brandegee, Connecticut; Frank Healy, clerk. House of Representatives: William C. Adamson, vice chairman; Thetus W. Sims, Tennessee; William A. Cullop, Indiana; John J. Esch, Wisconsin; Edward L. Hamilton, Michigan; Willis J. Davis, assistant clerk.]

INVESTIGATION OF THE CONDITIONS RELATING TO INTERSTATE AND FOREIGN COMMERCE AND THE NECESSITY FOR FURTHER LEGISLATION RELATING THERETO.

PRELIMINARY STATEMENT.

1. *Initiation of proceedings.*—The initiative of the proceedings provided for by Senate joint resolution 60 was taken by President Woodrow Wilson in a

message to the Congress of the United States, presented December 7, 1915, in the following words:

2. *President's message.*—In the meantime may I make this suggestion? The transportation problem is an exceedingly serious and pressing one in this country. There has from time to time of late been reason to fear that our railroads would not much longer be able to cope with it successfully, as at present equipped and coordinated. I suggest that it would be wise to provide for a commission of inquiry to ascertain by a thorough canvass of the whole question whether our laws as at present framed and administered are as serviceable as they might be in the solution of the problem. It is obviously a problem that lies at the very foundation of our efficiency as a people. Such an inquiry ought to draw out every circumstance and opinion worth considering, and we need to know all sides of the matter if we mean to do anything in the field of Federal legislation.

No one, I am sure, would wish to take any backward step. The regulation of the railways of the country by Federal commission has had admirable results and has fully justified the hopes and expectations of those by whom the policy of regulation was originally proposed. The question is not what should we undo? It is whether there is anything else we can do that would supply us with effective means, in the very process of regulation, for bettering the conditions under which the railroads are operated and for making them more useful servants of the country as a whole. It seems to me that it might be the part of wisdom, therefore, before further legislation in this field is attempted, to look at the whole problem of coordination and efficiency in the full light of a fresh assessment of circumstances and opinion as a guide to dealing with the several parts of it.

3. *The resolution.*—Senate joint resolution No. 60 was introduced in the Senate and, after amendment by including the investigation of Government ownership, was adopted by both Houses of Congress. It was approved by the President July 20, 1916, and reads as follows:

“ [Public resolution—No. 25—64th Congress.]

“ [S. J. Res. 60.]

“ Joint resolution creating a joint subcommittee from the membership of the Senate Committee on Interstate Commerce and the House Committee on Interstate and Foreign Commerce to investigate the conditions relating to interstate and foreign commerce, and the necessity of further legislation relating thereto, and defining the powers and duties of such subcommittee.

“ *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Interstate Commerce Committee of the Senate and the Committee of the House of Representatives on Interstate and Foreign Commerce, through a joint subcommittee to consist of five Senators and five Representatives, who shall be selected by said committees, respectively, be, and they hereby are, appointed to investigate the subject of Government control and regulation of interstate and foreign transportation, the efficiency of the existing system in protecting the rights of shippers and carriers and in promoting the public interest, the incorporation or control of the incorporation of carriers, and all proposed changes in the organization of the Interstate Commerce Commission and the act to regulate commerce, also the subject of Government ownership of all public utilities, such as telegraph, wireless, cable, telephone, express companies, and railroads engaged in interstate and foreign commerce and report as to the wisdom or feasibility of Government ownership of such utilities and as to the comparative worth and efficiency of Government regulation and control as compared with Government ownership and operation, with authority to sit during the recess of Congress and with power to summon witnesses, to administer oaths, and to require the various departments, commissions, and other Government agencies of the United States to furnish such information and render such assistance as may, in the judgment of the joint subcommittee, be deemed desirable, to appoint necessary experts, clerks, and stenographers, and to do whatever is necessary for a full and comprehensive examination and study of the subject and report to Congress on or before the second Monday in January, nineteen hundred and seventeen; that the sum of \$24,000, or so much thereof as is necessary to carry out the purposes of this resolution and to pay the necessary expenses of the subcommittee and its members, is hereby appropriated out of any money in the Treasury not otherwise appro-

priated. Said appropriation shall be immediately available and shall be paid out on the audit and order of the chairman or acting chairman of said subcommittee, which audit and order shall be conclusive and binding upon all departments as to the correctness of the accounts of such subcommittee.

"Approved, July 20, 1916."

4. *Membership.*—Following the adoption of the resolution the following Members of the Senate and House were appointed members of the joint subcommittee:

Senate: Francis G. Newlands, Nevada; Joseph T. Robinson, Arkansas; Oscar W. Underwood, Alabama; Albert B. Cummins, Iowa; Frank B. Brandegee, Connecticut. House of Representatives: William C. Adamson, Georgia; Thetus W. Sims, Tennessee; William A. Cullop, Indiana; John J. Esch, Wisconsin; Edward L. Hamilton, Michigan.

5. *Organization.*—The members of the joint subcommittee met and organized, selecting as chairman Francis G. Newlands and vice chairman William C. Adamson. They also appointed Frank Healy as clerk of the committee and Willis J. Davis as assistant clerk, and designated Messrs. Galt & Hull, Southern Building, Washington, D. C., as official reporters.

6. *Date of hearings.*—The date of the first hearing was set for November 20, 1916, at 10 o'clock a. m., at room 326, Senate Office Building, Washington, D. C.

7. *Arrangement of hearings.*—It is the desire of the committee to give ample opportunity to all interested in or having any relation to the subject matter of the proposed inquiry to express their views. But the committee would like early notice of the subjects to be discussed by the various persons appearing before it, so that the hearing can be, as far as practicable, in orderly sequence as to subjects. The purpose of the committee is to hear regarding Government regulation and Government ownership the opinions of economists and publicists of eminence, representatives of the Interstate Commerce Commission, the National Association of State Railroad Commissioners, State railroad and public utility commissions, representatives of the railroad executives and labor organizations, representatives of farming organizations, and farmers, shippers, and bankers, representatives of chambers of commerce, and other important business and industrial organizations.

8. *Subjects to be considered.*—The subjects to be considered are stated in general terms in the joint resolution and cover—

#### FIRST.

"\* \* \* the subject of the Government control and regulation of interstate and foreign transportation," including therein specifically:

- (a) "\* \* \* the efficiency of the existing system in protecting the rights of shippers and carriers and in promoting the public interest."
- (b) "\* \* \* the incorporation or control of the incorporation of carriers."
- (c) "\* \* \* and all proposed changes in the organization of the Interstate Commerce Commission and the act to regulate commerce."

#### SECOND.

"\* \* \* the subject of Government ownership of all public utilities, such as telegraph, wireless, cable, telephone, express companies, and railroads engaged in interstate and foreign commerce," including specifically:

(a) "\* \* \* the wisdom or feasibility of Government ownership of such utilities."

(b) "\* \* \* the comparative worth and efficiency of Government regulation and control as compared with Government ownership and operation."

9. *Government regulation and control.*—Under this head, without excluding other questions, attention is particularly called to the following subjects:

(a) Whether the Interstate Commerce Commission is overloaded and whether its jurisdiction should be confined to questions of discriminations, rebates, and rates, its jurisdiction over other subjects, such as valuation, safety inspection, etc., to be turned over to some other body or bureau to be created by law.

(b) Whether it is necessary to make any change in the organization of the Interstate Commerce Commission with a view to prompt and efficient action; whether it is feasible to increase the number of commissioners and to permit them to divide into several departments for the consideration of cases, and if so, whether there shall also be consideration in bank and also whether there shall be appeal from decisions in the department to the commission in bank.

(c) Whether such departments of the Interstate Commerce Commission shall sit in Washington or be assigned to definite traffic areas somewhat after the manner of the judicial circuits, and whether in the latter case there should be provision for their sitting in bank at Washington or for some central body in Washington with the duty of hearing appeals and directing the procedure of the departments.

(d) Whether under the present system the credit of the common carriers is issued with a view to their securing the moneys needed for necessary improvements and extensions in the interest of the public and at reasonable rates of interest. Whether Government regulation of the issue of securities is advisable, and if so whether it is to the interest of the public as well as the carriers that this regulation should be exercised by the National Government and whether it should involve merely publicity or absolute control of the issue of securities. Whether concurrent jurisdiction of the Nation and the States to control such issues is in the interest of the carriers and the public. What will be the field of operations for the State railroad commissions in the interest of the public if the control of securities and the control of rates is vested in the Interstate Commerce Commission. Whether and to what extent within a period of five years it will be necessary to enlarge the facilities of the common carriers in the interests of the public and whether the present system of Government regulation is such as to insure the credit of the carriers with a view to their making additional necessary expenditures.

(e) What is the effect of dual regulation on the parts of the States and the Nation of the rates of carriers. What, if any, contradictions does it involve, and what, if any, discriminations does it involve as between States and localities.

(f) Whether or not any regulation is feasible of the wages and hours of employees of common carriers, and whether or not it is advisable, in the interest of the public, and with a view to maintaining uninterrupted commerce between the States, to take any further legislative action regarding the adjustment of disputes between the carriers and their employees and regarding strikes and lockouts.

(g) Whether any national legislation is required as to the organization of carriers in interstate commerce in the nature of national incorporation, permissive or compulsory, or in the nature of national holding companies under which State corporations may be controlled and unified in their operations in the interest of interstate commerce, and what form of national legislation for the incorporation of carriers or for holding companies owning the stock of State companies, is desirable. How will national incorporation affect the police powers of the States over railroads operating within their boundaries. Will it be advisable, as in the case of the national banks, for the National Government to prescribe a uniform rule for the taxation by the States of railroad properties and securities.

10. *Government ownership*.—" \* \* \* the wisdom or feasibility of Government ownership of such utilities" and " \* \* \* the comparative worth and efficiency of Government regulation and control as compared with Government ownership and operation," including under this head:

(a) The practical results of Government ownership both as to efficiency and economy where actually practiced.

(b) Whether Government ownership is compatible with our system of government and what its effect will be on our governmental institutions.

(c) Whether a system of Government ownership will suit local needs.

(d) A practical method of securing Government ownership, whether by purchase or condemnation of properties, or by purchase or condemnation of bond and stock issues, or otherwise.

\* \* \* \* \*

The views of all who are interested in or have information regarding the foregoing questions are invited by the committee, either by written communication or at the oral hearings.

It is suggested that with a view to maintaining a logical sequence in the hearings those participating therein classify their remarks according to the foregoing subheads as far as practicable.

FRANCIS G. NEWLANDS, *Chairman*.

(The newspaper advertisement is printed in full, as follows:)

**NEWLANDS JOINT CONGRESSIONAL COMMITTEE—AN OPEN LETTER TO ALL INVESTORS  
IN AMERICAN RAILWAY SECURITIES.**

Do you, the real owners of America's railroads, wish to be ignored by the Newlands joint congressional committee's investigation, which began yesterday and will continue probably for many months?

Or do you want to have your interests properly presented and represented by spokesmen chosen by you and authorized to speak for you, with a view to securing fair play for your invested savings?

Every conceivable interest will be represented at the committee's hearing, except the real owners of our railroads, you and us and the rest of the 600,000 investors who, by means of our savings, have provided the capital for the creation and development of our \$20,000,000,000 transportation system.

There is no one authorized to go before the congressional committee and present your united views.

The truth is that the small and moderate investors who have supplied the bulk of our railroad capital are the only body or class identified with the railroads who will not be very much to the fore throughout this investigation so vital to the future of every railroad stockholder and bondholder in the land.

Read carefully the following list of interests Senator Newlands, the chairman, declares the committee desires to hear from:

"The purpose of the committee is to hear, regarding Government regulation and Government ownership, the opinions of economists and publicists of eminence, representatives of the Interstate Commerce Commission, the National Association of State Railroad Commissioners, State railroad and public utility commissions, representatives of the railroad executives and labor organizations, representatives of farming organizations and farmers, shippers, and bankers, representatives of chambers of commerce and other important business and industrial organizations."

Not one word, you will note, about the great army of frugal citizens whose hard-won savings have brought the railroads into being and keep them running. Railroad regulators galore are cordially invited. So, too, are the labor unions, the shippers, farmers. "Important business and industrial organizations" are likewise bidden to the deliberations.

But railway investors are wholly without any "important organization" to champion their rights.

This ought not to be.

Are you content to stand idle and impotently by and let everybody and anybody else say what should be done with your properties?

Don't you feel that your wishes, your views, your interests should cut some figure in the momentous proceedings—proceedings which are to determine whether the time has come to have the Government become owners of our 250,000 miles of railway or whether some other method be adopted hereafter in handling the whole railroad situation?

Surely to ask the question is to answer it.

If you agree with this, if you wish to have a voice in shaping the future and the fate of your properties, you can insure the proper presentation of your wishes by joining the movement to organize a Railway Investors' League and, later on, by nominating and authorizing the strongest delegates possible to go before the committee to defend your legitimate rights.

**RAILWAY INVESTORS' LEAGUE.**

The Railway Investors' League has already tentatively enrolled several thousand members from all the States of the Union, and a start has been made in inducing the leading railroad companies to bring the movement directly before each one of their recorded stockholders.

If the response to this announcement and to the other measures being taken by those who are striving to bring together railway investors in a united, influential, nation-wide body shows unmistakably that you wish to have some voice in the fate of your properties, steps will be promptly taken to proceed with the formal and permanent organization of the Railway Investors' League.

Such an association must, of course, be self-supporting, and it is proposed to fix the annual dues at \$1.

Do not forward any money at this stage, but simply fill in the appended blank form and mail it at once, without committing yourself to any obligation or to any responsibility whatsoever.

If you do not consider your own rights worth protecting, it is scarcely to be expected that anyone else will.

JOHN MUIR, New York City, *Chairman*,  
LIONEL SUTRO, New York City, *Vice Chairman*,  
B. C. FORBES, New York City, *Vice Chairman*,  
PAUL MACK WHELAN, New York City, *Secretary*,  
*Organization Committee.*

J. A. FAGAN, Minneapolis, Minn.  
CARL W. PEIRCE, Massillon, Ohio.  
F. EDWARD SOMMERS, St. Louis, Mo.  
WILLIAM K. EWING, San Antonio, Tex.  
H. T. WINSTON, Washington, D. C.  
C. MCCONNELL, M. D., Hogsansburg, N. Y.

Date, \_\_\_\_\_, 1916.

**RAILWAY INVESTORS' LEAGUE,**

JOHN MUIR, *Chairman*,

61 Broadway, New York City:

I have read the platform of the Railway Investors' League. I am in hearty sympathy and accord with its object and purpose, and I hereby pledge my co-operation and assistance in carrying out the program.

With the understanding that signing this form does not place me under financial obligation, please enroll me as a member of the organization.

Signed \_\_\_\_\_

Address \_\_\_\_\_

Owner of \_\_\_\_\_

(Name securities owned.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Senator ROBINSON. It may be that some of the questions I am asking you are more or less academic, but they are not asked for the purpose of heckling in any wise, but solely for the purpose of clarifying my own mind with respect to the matters which you have suggested. You mentioned certain reforms as fairly calculated to accomplish the ends which you think are desirable in railway regulation.

Mr. THOM. And which are making much progress in that direction.

Senator ROBINSON. The first relates to the national regulation of all rates for roads engaged in interstate commerce. I understand that you expect hereafter to discuss the law applicable to these suggestions, and I will not go into that now, or anticipate your discussion by questions in detail concerning the power of Congress to occupy the entire field of rate making as to railroads engaged in interstate commerce; but in order that I may understand now your viewpoint as to this proposal, I ask do you contend that if a railroad engages in interstate commerce the rates which it charges on purely intrastate traffic are within the regulative power of Congress?

Mr. THOM. Yes, sir.

Senator ROBINSON. Is it not true that Federal control over interstate rates is limited to two conditions, so far as our courts have yet decided—first, the nullification of rates which are confiscatory, and, second, the nullification of rates which constitute a discrimination against or a burden upon interstate commerce?

Mr. THOM. I think the courts have gone further, and have said that it is the constitutional power of Congress to regulate the entire instrument of interstate commerce.

Senator ROBINSON. Has the Federal Government power, in your opinion, to fix or regulate rates on purely intrastate traffic, merely because the commodities are transported over a railroad which, while doing intrastate business, is also engaged in interstate business?

Mr. THOM. I think that the foundation of the power of Congress to act in the matter is to regulate the instrumentality of interstate commerce in all its bearings.

Senator ROBINSON. Do you not think that is limited to its connection with interstate commerce; that it regulates it as an agent of interstate commerce and not as an agent of intrastate commerce?

Mr. THOM. You can not regulate it; you can not protect it; you can not sustain it unless you regulate it in all its activities.

Senator ROBINSON. Then, I understand you correctly in your original statement. I wanted to make sure of it.

Mr. THOM. Yes. I will present an argument on that subject at a later stage of these proceedings.

Senator ROBINSON. With reference to the suggestion which you make as to compulsory Federal incorporation of railways before permitting them to engage in interstate commerce, this, in your opinion, would relieve the unequal conditions under which the railroads are organized and operated, by reason of the limitations and provisions of their State charters, but it would not add anything, of course, to the regulative power of Congress?

Mr. THOM. No.

Senator ROBINSON. Congress can do everything without Federal incorporation that it could do with it?

Mr. THOM. I think it can; but, as I told you, there is some difference of opinion about that, in respect to any provision of a congressional act which might be construed as an amendment to a State charter.

Senator ROBINSON. It would, in your opinion, constitute a tendency toward uniformity, which would strengthen railroad credit?

Mr. THOM. Undoubtedly; and it would have a most important bearing upon universally accepted control as valid by Congress of the issue of securities.

Senator ROBINSON. Your third suggestion relates to reorganization of the Interstate Commerce Commission and changes in its jurisdiction and powers, so that it shall become a judicial tribunal?

Mr. THOM. Yes, sir; largely.

Senator ROBINSON. And that regional subordinate commissions be established, with right of appeal to the central commission provided in certain cases?

Mr. THOM. Yes; on exceptions.

Senator ROBINSON. How many of those regional commissions do you think would be required, Mr. Thom?

Mr. THOM. I have not gone over the country about that. I do not know.

Senator ROBINSON. Very well; if you have not determined upon the number—

Mr. THOM. No. I thought that was a matter that the Interstate Commerce Commission would study and recommend to Congress.

Senator ROBINSON. Now, if these regional commissions are created, as you suggest, would it still be necessary for them to have examiners in order to make a proper investigation of cases coming before them?

Mr. THOM. I should hope not, but I can not tell.

Senator ROBINSON. The primary purpose of creating regional commissions, as I understand you, is to bring the work—the investigation itself—closer to the commission so that the litigants may have the advantage of the actual service of the commissioners themselves rather than of subordinates in the person of examiners and clerks?

Mr. THOM. Yes. The double object of bringing the Government close to the communities whose interests are affected, and the other object is that of assuring the character of the men—the type of the men, I would say, rather than the character—the type of the men who are to have charge of these important matters.

Senator ROBINSON. You would not advocate the creation of these regional commissions unless they were so constituted and equipped as to accomplish these two things?

Mr. THOM. That is right; yes.

Senator ROBINSON. To bring the public closer to the commission and the commission closer to their work?

Mr. THOM. Yes; and that the type of men be assured. There is great complaint—somebody made it here this morning, I think Judge Adamson—a great complaint, not only on the part of the shipping public, but on the part of the railroads. that in many important matters they do not get beyond the examiner; and while these examiners are fine young men and capable people in a great many ways they are bound to have their grade somewhat fixed by the compensation they get.

Senator ROBINSON. With the constantly increasing work that is being imposed by Congress on the commission and the natural growth of their duties, with the expansion of the commerce of the country, this condition will grow worse.

Mr. THOM. Yes; undoubtedly so.

Senator ROBINSON. Now, just an inquiry or two about the increase of the power of the Interstate Commerce Commission over rates which constitutes another one of your suggestions. Do you suggest that this power be extended in any other particular than so as to give the commission the power to fix minimum rates?

Mr. THOM. That, in my representative capacity, is the full extent to which I would make the recommendation. I mean that I am expressing the views of the railroad executives in making that recommendation.

Senator ROBINSON. Yes; you do not wish to express any personal views concerning it?

Mr. THOM. I do not think it would be very becoming for me to express a personal view.

Senator ROBINSON. I will not ask you to do it.

Mr. THOM. I want to say that my personal view goes to the full extent that I have recommended there, however.

Senator ROBINSON. Would the power to fix both minimum and maximum rates, if vested in the commission, prevent discriminations?

Mr. THOM. I think it would.

Senator ROBINSON. That is the principal object of giving that power to the commission?

Mr. THOM. That is one object; but the other object—and a very important one—is to prevent the improper depletion of the revenues of the companies through some local conception of what is best to be done for the company?

Senator ROBINSON. And to prevent the railroads themselves, under stress of competition, from making unfairly low rates?

Mr. THOM. Yes.

Senator ROBINSON. Would not the difficulty of determining the relative reasonableness of rate still exist after the power to fix a minimum rate is given to the commission and the rate actually fixed? Would not there still exist a latitude between the minimum and the maximum that would enable the railroads to practice discrimination?

Mr. THOM. I think you will find in the suggestion that they be given entire power over the question of discrimination.

Senator ROBINSON. Very well.

Mr. THOM. And the protection of the rate structure.

Senator ROBINSON. Referring to your fifth suggestion, which would prescribe some of the things that the Interstate Commerce Commission must take into consideration in fixing rates, you say that they should be required to consider the value of the service. Do they not do that now?

Mr. THOM. I do not know, Senator, whether they do it or not. I have a good deal to say when the proper time arrives on that question of value of service, and if you have time now for about half an hour I would like to do it at this time.

Senator ROBINSON. You need not do it now. I prefer that you should do it in your own time, although I should be very glad to hear your discussion of that subject. What do you mean by the suggestion that the commission should be required to consider the rights of the passengers, shippers, and owners of the property transported as an element in rate making?

Mr. THOM. What do I mean by that?

Senator ROBINSON. Yes.

Mr. THOM. I mean you would have to have reference to the public's side of the question as well as to the side of the corporation that furnishes the service.

Senator ROBINSON. The commission now has regard to the expenses of the railroad in maintaining and operating its property, does it not?

Mr. THOM. Not always.

Senator ROBINSON. Well, should it always do it?

Mr. THOM. I think it ought always do it?

Senator ROBINSON. Do you think the law should require them to do that without regard to the economical or extravagant maintenance of its properties?

Mr. THOM. No, sir; I do not. But now I will take the illustration that is in my mind that caused that provision. Everybody knows that the railroads, when they have paid wages and increased rates, have not done it as a means of extravagance; they have done it under the compulsion or forcing that they felt they must recognize. The Interstate Commerce Commission has said in a case that they can

not consider an increase in wages if not justified as an element in the expense.

Now, what does it mean by that? You gentlemen know something of the way wages are demanded. We thing the Interstate Commerce Commission ought to know that, and when we find that situation we feel that it ought to be taken into consideration in determining rates.

Senator ROBINSON. That seems fair, but I did not infer from your statement of that matter that it would embrace this item. I thought if you had anything embraced there other than road improvements and things of that sort, you would have specifically mentioned it. There ought to be some limitation on that provision, however. The commission ought not to be required to make rates always remunerative to railroads without regard to the manner in which the railroads had expended their funds.

Mr. THOM. Oh, no; certainly not. In other words, there must be some supervision over the matter of expenses.

Senator ROBINSON. Yes.

Mr. THOM. I assume that when Congress says expenses, it means legitimate expenses. It does not mean wastefulness or throwing away.

Senator ROBINSON. Yes; reasonable and necessary expenses.

Mr. THOM. Certainly. There must be that margin to the managers as to what they consider necessary, and the Government must not prescribe an arbitrary rule, for it can not be done. But there might come up a case theoretically. However, I do not think you will find it.

Senator ROBINSON. From your statement I infer that you are merely expressing the suggestion in general terms, that you were not trying to write it as it should be written into law.

Mr. THOM. Yes, sir.

Senator ROBINSON. I did not understand exactly what you meant by it. Your suggestions with reference to giving the Interstate Commerce Commission power to revise railway mail pay would undoubtedly relieve Congress. Mr. Underwood suggests that is already the law.

Mr. THOM. Well, it is measurably the law. Maybe it will be able to do it a little more effectively.

Senator ROBINSON. You would like a modification of the law in that particular, would you?

Mr. THOM. Yes, sir. The truth of the matter is that I am not acquainted with what the law has done. Somebody appointed me on a committee the other day of counsel to appear before the Interstate Commerce Commission on the subject, and I noticed my name at the head of a brief which I never saw, and I found that I was in rather deep water.

Senator UNDERWOOD. As I understand it, the last Post Office appropriation bill took the control of the fixing of the railway pay out of the hands of Congress and authorized the Interstate Commerce Commission to determine what it should be.

Senator ROBINSON. I think that is what you want in that suggestion, and I think it is a fair suggestion. I was just going to remark that. Your suggestion as to Government control of the issuance of stocks and bonds of the railroads engaged in interstate commerce is undoubtedly in conformity with the opinion of growing public

thought on the subject, and more than any other one thing would tend to strengthen railroad credit and protect it for the future.

Mr. THOM. I want to call your attention right there, Senator, to the fact that that proposition on our part indicates that we desire to get proof of a provision of the law which would prevent the recurrence of the things that the public complain of. In other words, to talk about the doing of these other things does not involve the suggestion on our part that the Government should not keep its eye on the possibility of abuses for the future. We want the machinery to provide for that as well as for the other things. We are trying to take a broad and comprehensive and patriotic view of what the Government ought to do in this matter of regulation.

Senator ROBINSON. That concludes my examination of Mr. Thom. In your statement you submit concrete propositions for reforms which you think are necessary in the public interest and to protect the rights of the railroads and railroad investors, and you have performed a service, which I appreciate.

Mr. THOM. I thank you, Senator.

The CHAIRMAN. Mr. Sims, will you proceed?

Mr. SIMS. Mr. Thom, I do not want you to assume or conclude that I am unduly inquisitive, or in an unfriendly attitude, because of the questions I am going to ask. When we get through with this hearing I want to, as far as I can, know who is bound by it or who is estopped by it, and that sort of thing. Now, you appear, as attorney here for a committee, as I understand it.

Mr. THOM. Yes, sir.

Mr. SIMS. The Advisory Committee of Railway Executives?

Mr. THOM. Yes, sir.

Mr. SIMS. Now, you may have stated it, and if you have, I do not remember, what railroad executives is this committee advising, what systems do they represent, what per cent of the railroad property of the country do they represent?

Mr. THOM. I should suppose it is between 85 and 90 per cent now.

Mr. SIMS. In other words, you have the companies by name, so that they can be put in the hearings, that you in this way represent?

Mr. THOM. Oh, yes.

Mr. SIMS. And this 85 per cent of the railway interests——

Mr. THOM. I think it is over 85 per cent now.

Mr. SIMS. Well, whatever it may be, that you are representing them, and what you represent as their wishes will be acquiesced in by them?

Mr. THOM. That is my understanding.

Mr. SIMS. Now, then, there is about 15 per cent, then, of the railway interests of the country that have not indicated their willingness to be bound by your recommendation?

Mr. THOM. There are some small ones, mostly, of course not altogether. There are some, mostly small lines.

Mr. FAULKNER. Short lines.

Mr. THOM. And I have no doubt in the world that a great many of them do not dissent in any way. We happen to have the specific authority of a great many.

Mr. SIMS. Well, are they in general lines that are in the nature of subsidiary lines, owned by other roads?

Mr. THOM. No, sir; I do not know what they are. As a rule, of course, some of them are, but not all.

Mr. SIMS. You are representing the public here, as I myself am, and you are asking us to take that view; that is, the view that this whole proceeding shall be in the public interest.

Mr. THOM. Yes, sir.

Mr. SIMS. Pressing nothing that the public interest does not demand or require or will not be benefited by receiving. Of course, this 15 per cent is part of the public—the small roads—and I suppose there are a greater number of small corporations than large ones. In your testimony here you referred to the fact that your recollection was that in what we call the Pennsylvania Railroad System it embraces 149 separate corporations.

Mr. THOM. That is my recollection. I do not remember exactly.

Mr. SIMS. Well, that is about accurate. And that 149 corporations that constitute the present Pennsylvania Railroad System, as a matter of course, are parties to this investigation.

Mr. THOM. I should say so.

Mr. SIMS. And you are representing their views, the same as you do the Southern and all others—I mean they are represented by yourself, and you being counsel—

Mr. THOM. Well, I do not want to be in the position of saying that I recommend anything specific. If it is necessary at any time, I will put in the record the names of the roads I represent.

Mr. SIMS. I think that would be a good idea from the fact that some roads may afterwards say they did not know they were being represented or something of that kind; that is, the stockholders in some roads.

Mr. THOM. I can put a list of those into the record.

Mr. SIMS. You are acting in the capacity of attorney to an advisory committee?

Mr. THOM. Yes, sir.

Mr. SIMS. I suppose that means only in reference to this examination.

Mr. THOM. Well, it does not mean only in reference to that, so far as my present appearance is concerned. It is confined to what might pass here. But my authority is a larger one than this mere hearing.

Mr. SIMS. Well, this committee of executives—are they chiefly railroad presidents?

Mr. THOM. They are either railroad presidents or they are chairmen of the boards of railroads. Judge Lovett is chairman of the board of the Union Pacific and Mr. Walters is chairman of the board of the Atlantic Coast Line and the Louisville & Nashville. They are both members of this committee of executives.

Mr. SIMS. Now, this committee that you do represent—are they the owners of the railroad properties with which they are officially connected?

Mr. THOM. I assume that the stockholders own the roads and, of course, they do not own individually a majority of the stock, I imagine, although I am not acquainted with their ownership.

Mr. SIMS. Do you know whether they are representing the owners of railroads; that is, the stockholders and bondholders?

Mr. THOM. They represent the railroads. They are acting in their official capacity as the heads of those systems.

Mr. SIMS. I do not understand that an operative officer of a railroad has a right to bind stockholders as to financial matters or policies or anything of that kind?

Mr. THOM. I think it would be safe to assume for these railroad presidents and others that they feel they have the authority or the capacity to represent all the interests. At least, whether they have or not, that is the extent of my authorization that comes from them.

Mr. SIMS. It is a fact, or has been, I have supposed, to some extent that the office of president of a railroad company was more in the nature of being a general manager than otherwise?

Mr. THOM. I do not so understand it.

Mr. SIMS. When one railroad company is financially owned by another railroad company the president of the first railroad company may not be the representative of the financial interest in the second company.

Mr. THOM. Oh, that is quite true, but when you look over the names of these gentlemen I think you will find that they are responsible representatives of the railroads.

Mr. SIMS. Not having the means of knowing, or not knowing, that is what I am trying to do.

Mr. THOM. I will give them for the record.

Mr. SIMS. I mean the advisory committee, that is what you have reference to?

Mr. THOM. Yes, sir.

Mr. SIMS. I am speaking of the others. Now, take the Louisville & Nashville Railroad Co. It owns a large controlling interest in the Nashville & Chattanooga Railroad Co. Therefore the president of the Nashville & Chattanooga Railroad Co. is representative, to a great extent, of the Louisville & Nashville Railroad Co.'s interest in that company rather than the general stockholders.

Mr. THOM. Yes; but the man who is on this committee is Mr. Walters, who is the chairman of the board of the Louisville & Nashville.

Mr. SIMS. And does he not get that position by reason of the Louisville & Nashville, the majority of its stock being owned by the Atlantic Coast Line?

Mr. THOM. Yes, sir.

Mr. SIMS. The Atlantic Coast Line is the holder directly of the stock of the Louisville & Nashville Railroad Co.?

Mr. THOM. It holds a majority of the stock, as I understand it; I do not know how much, but I understand a majority of the stock of the Louisville & Nashville. Then the Louisville & Nashville has stock control of the Louisville, Nashville & St. Louis, and in that way Mr. Walters has become very sufficiently representative of both interests.

Mr. SIMS. In other words, the railway company that he represents, being the controlling company, he therefore represents the company which can, and does in fact, control the policy of these other railroads?

Mr. THOM. That is my understanding.

Mr. SIMS. I wanted to get that, because I think it is something that it is well to have known.

Mr. THOM. The propositions you present are from 85 per cent of the railroad interests of the country!

Mr. THOM. I think, when you get to talking about 85 or 90 per cent, it is nearer 90.

Mr. SIMS. Let it be 100, then.

Mr. THOM. I merely want to state what that means. That means a railroad, or railroads, in the class into which the railroads are divided by the Interstate Commerce Commission, having as much as a million dollars gross income a year. Of course, there are a great many shorter roads outside of that.

Mr. SIMS. Who do not earn that much?

Mr. THOM. Yes, sir; and one gentleman representing a large number of short roads on the Pacific coast came into my office yesterday and stated he wanted to appear, and I have no doubt you will have representatives of these short roads. I am representing the roads in the class I have mentioned.

Mr. SIMS. Which is practically the railroad interests of the entire Nation?

Mr. THOM. I think so.

Mr. SIMS. That is the way I understood you.

Mr. THOM. There are some interests—there is a very large percentage—that have conferred about this matter, and have argued with each other about it, and have come to the conclusions which have been placed before you.

Mr. SIMS. By yourself?

Mr. THOM. Yes, sir.

Mr. SIMS. And those conclusions are propositions for legislation and changes in the existing conditions, which are so general and so radical, as compared with the existing conditions, as to practically be an entire new situation or new legislative consideration of the entire subject matter of the railroad interests of the country, its credit, its capacity to serve the public and all those things considered; in other words, the legislation you have asked for is so different from existing conditions as to amount to what you might say is a new codification and revision of all existing railroad laws and of the powers of the States, as they are now exercised, together with existing national legislation? So, if I see it correctly, it becomes practically fundamental regarding all transportation questions. Is that not substantially so?

Mr. THOM. It does not involve—it is easily engrafted as an amendment upon the present interstate commerce act, but the changes that are made in it have many fundamental qualities. There is much in it that is a real change from present conditions.

Mr. SIMS. That, if carried out, would be practically a new interstate-commerce law?

Mr. THOM. Well—

Mr. SIMS (continuing). Rather than an amendment of the existing law?

Mr. THOM. Well, the difference between us on that would be simply a difference of terms. We both know it can be carried out by an amendment to the present law, and we both know that the changes that would be made in it are far-reaching, and anything further than that would be just a difference in terms.

Mr. SIMS. Now, Mr. Thom, in hearing your entire discussion, which I did except one day—and I have read that since—it is your belief, or the belief of those you represent, that unless there are changes in the existing law along the subject dealing with the sub-

jects which you have outlined, that the present conditions do not meet the demands of the commerce of the country, and without these changes, relatively speaking, our transportation system is a failure?

Mr. THOM. Yes, sir; and Government ownership inevitable.

Mr. SIMS. If we do not pass legislation substantially along the lines you have marked out, there is only one logical conclusion to reach, and that is Government ownership must come in order to have transportation at all?

Mr. THOM. You say substantially along the lines I have marked out.

Mr. SIMS. I mean so as to accomplish the purposes you have marked out.

Mr. THOM. Do not lose sight of the fact that I have been put, by the action of this committee, in front of these proposals, and my desire was to hear some of the independent thinkers of the country to see what effect that might have on the suggestions I might make. I am still in that open-minded condition, and there may be members of this committee and other people who may appear who may suggest a wiser program than I have done, but unless things are accomplished, as you have put it—unless these things are accomplished to strengthen the railroad credit and enable the situation to be so brought about as to cause people to regard railroads as a stable thing in which to invest safely, in my opinion, the time is short between now and Government ownership.

Mr. SIMS. And governmental ownership is made inevitable on the failure to legislate so as to accomplish the purposes you mention?

Mr. THOM. Yes, sir; then I say also that all the talk we are having about the States has no real place in this investigation, because if something is not done to stabilize the present system and to bring the necessary amount of money into it, then Government ownership will come and then State control of all sorts will go. So I am trying to retain as much as I can, with safety to the general system, all State participation, because that is the only way, in my judgment, that will obviate ownership; and when Government ownership comes, then there will be but a single interest and single power, and every divided power must disappear.

Mr. SIMS. I think you state the matter so any of us can understand it. Then the basic grounds of the investigation here, if I understand them, should be conducted along the lines of ascertaining whether or not it is best to avoid Government ownership by legislation that will result in enabling the railroads to perform the services as they should be performed, either through the suggestions you have made or some other legislation that will accomplish the same result?

Mr. THOM. That is my judgment. I think you have stated it accurately.

Mr. SIMS. Then the issue between private ownership and public ownership, by making private ownership possible in this present condition, is not possible or feasible or practicable without some remedial legislation?

Mr. THOM. The present conditions can not continue.

Mr. SIMS. And so, then, without any question of the remoteness of the matter or the immediateness of it, if the conditions must be

changed in order for private ownership to be successful, we can not too soon change the necessary conditions to that end?

Mr. THOM. That is my judgment.

Mr. SIMS. Now, what is possible in physics or mathematics is one thing; what is possible in legislation is another thing; what is impracticable in legislation is therefore impossible; that is it may as well be physically impossible. We are confronted with the old, settled idea that each State has rights which it ought to exercise and which should never be exercised by a central power and can never be exercised by any central power with the same benefit locally. We have people all over the country with different views and we are just representatives of those people in those different States with those different views, and therefore I think this investigation ought to be as broad and as unlimited as is necessary to meet all these suggestions and views of the public generally and of those who do the voting, as well as gentlemen upon whose responsibility the future operation of the railroads depends.

Now, there is no proposition before this committee—nobody advocating it—for a legislative proposition about Government ownership at this time. Consequently it seems to me an examination of these propositions, as fairly as we can, the possibility of getting them enacted into law, is the practical work for this committee. That is my own view of it. If I am in error about it, I want to be corrected.

I want to say, as far as I am personally concerned, Mr. Chairman. I have absolutely no prejudice. I never was employed by any railroad company in my life to render any form of service for them; I was never employed by anybody to represent them against the railroads. I live in a county that is uncontaminated by a single mile of railroad, and consequently can not have any personal feeling for or against the railroads.

Mr. THOM. I have often said that those who know most about the railroads are those who never saw a railroad.

Mr. SIMS. But I have seen them.

Mr. THOM. We have one district where a railroad runs right along the edge on one side and right along the edge on the other side, and the most radical things, so far as the railroads are concerned in that State, come right from that district.

Mr. SIMS. But I am not proposing anything radical. What I am referring to are practical things.

Mr. THOM. But I mean the people who see the country going to ruin from the railroads are there.

Mr. SIMS. I will tell you why we have no railroads in my county. It is a good county. It has phosphate, iron ore, timber, building stone, farm land—good agricultural land—and the county has on several different times voted a bond issue of \$50,000 to any railroad that would cross that county—that is, either north, east, south, or west—and a railroad was being built from Memphis to Nashville, called the Tennessee & Midland, and after it got built to the Tennessee River, which was practically a half-way point, why, the man who was in charge of it then died. He was a Mr. Morse, from St. Louis. The Louisville & Nashville Railroad Co., in the administration of his estate, bought up the stock of that railroad, and then, owning the Nashville & Chattanooga Railroad by a majority of stock, leased it to the Nashville & Chattanooga and prevented its being built.

Now, that is the helpfulness that we have had toward getting a railroad built through our good county. They are not to blame for it, because the railroads will not even build one when the money is offered to them. There stands an authorized bond issue to build one now through my county, but for some helpful purpose or another they are never able to get there. So, there is a portion of the country unserved by railway facilities that they have done everything they know how to do in an effort to get a railroad there, even to the extent of voting a bond issue. So, if I have any prejudice in this matter at all, it exists on account of that local condition there. I think the railway systems of this country should be built up so as to develop each undeveloped section of the country, and that if the rate—if the amount of business through that county will not pay for building a railroad across the county, that is no reason why it should not have a railroad.

Mr. THOM. One of the great difficulties which men charged with comprehensive duties have to meet is some local condition, such as you have described, where somebody has not got just what they think they ought to have. Now, it is manifestly injurious to the public interest that the great question of transportation should be affected at all by some local condition.

Mr. SIMS. I think you are right about that.

Mr. THOM. I sympathize with your criticism. I never heard the facts in that case before, but that condition of affairs you say, if you have any prejudice, creates it. Now, you come on this commission. You have great national responsibilities on your shoulders. You have got the fate of this Nation in your hands. You have got to help determine the standard of commercial possibilities for the future, and you come to it, as you say, from that situation. Now, can not we get away from those conditions when we are dealing with so great a subject as this? That would illustrate my plea for trying to have a national regulation of a matter so national in its character.

Mr. SIMS. Well, I stated this fact, or story, I have told you for two reasons. I think the committee and yourself ought to know whether or not there is any local condition that affects my judgment—if it does affect it—but the point I was trying to reach was another matter entirely, and that is this: The strife between railroad companies under the existing conditions—the struggle to shut out railroad competition in their regional field—has forced communities like my own to suffer. That action in preventing the building of this railroad was not to keep a railroad from being built in my county and the contiguous counties, but it was done to prevent competition at Nashville, Tenn.

Mr. THOM. Yes, sir.

Mr. SIMS. Between some other railroads.

Mr. THOM. Yes, sir.

Mr. SIMS. Now, the destructive work of competition between railroads has actually overdeveloped some sections and actually prevented the development of others.

Mr. THOM. Undoubtedly, and now right there I want to say I think that is a very mistaken railroad policy. I believe that railroads are bound to succeed by virtue of the prosperity of the communities they serve, and that if Nashville could be built up by a number of railroads going there, it is vastly to the advantage of

every railroad in it to have Nashville so built up instead of keeping some railroad out. We have got a point on our road, I have not talked with this president of the railroad, but I have talked with his predecessor, and I know it was his policy to do nothing to prevent the construction of a railroad other than his own into that point, because he felt by doing so, if that point was built up, he would get more trade from the prosperous community than he would get from the community that has limitations, perhaps, put upon it by being served by a single line. I entirely agree with the philosophy which suggests your remarks there. I do not believe in that policy, and I believe that as the wisdom of governmental regulation grows so we may hope for the policies and views of railroad managers to become expanded and to grow likewise and to take a more comprehensive view of this problem than some of them have thought wise heretofore.

Mr. SIMS. In the interest of the whole public I believe that, comparatively speaking, relatively speaking, the present system is an absolute failure. Now, I read from a speech delivered by yourself at Atlantic City, October, 1916, in which you say: "The average movement of freight in the United States is 24 miles a day."

Mr. THOM. I have received a letter from one of the principal railroad presidents of the country about that statement in that speech, and he has called my attention to the fact that that 24 miles a day includes the movement of all cars while they are waiting for loads at points of loading, and on sidings, and in yards, in transit, and all that, and since his letter I have tried to get the exact figures, which I have not yet done, and I have not again used that illustration because I do not know whether it is so.

Mr. SIMS. It is substantially correct, I take it, is it not?

Mr. THOM. I do not know.

Mr. SIMS. Twenty-six or twenty-three miles, or something of that sort?

Mr. THOM. I do not know the figures.

Mr. SIMS. What is the relative gross receipts of railroad companies from freight and passenger traffic?

Mr. THOM. The freight traffic is very much greater.

Mr. SIMS. Is it not about three to one?

Mr. THOM. I do not know. I suppose it is different with different companies. The New England Railroad has about one-half.

Mr. SIMS. I am talking about all railroads.

Mr. THOM. I do not know; but it is very much greater for freight.

Mr. SIMS. You say further: "There is an average movement of the freight car of 1 mile an hour throughout the country."

Mr. THOM. Well, that is the very point I say, Mr. Willard, in writing to me, says I am mistaken about those figures; that the movement of cars while in motion was, of course, vastly greater than that, and he gave the figures—told me in that letter—

Mr. SIMS. I mean that each car during the year upon the average moves only 1 mile in one hour of time, including all the movements it makes, including the time it is lying at a siding or at a terminal, that the car itself operated in the freight service only moves 1 mile in one hour, or 24 miles a day?

Mr. ADAMSON. They are not counted until they are loaded, are they?

Mr. THOM. That is what I say; I have not been able to get at the bottom of it. I am trying to verify that statement, because it was called to my attention by a letter from Mr. Daniel Willard, of the Baltimore & Ohio.

Senator UNDERWOOD. If you will allow me to interrupt, I think you will find the question embraced in the report of the Interstate Commerce Commission a year or two ago in reference to loaded cars, and my recollection is the report shows they moved 24 miles a day—that is, the time on the average—that included the time on side-tracks and on spurs.

Mr. SIMS. That does not include the time actually in transit, I should say?

Senator UNDERWOOD. No.

Mr. SIMS. Then it does include substantially the movement. Now, I want to say there is three-fourths, if I am correct about it being three-fourths, of the gross receipts of the railroad companies of this country earned upon cars moving at a snail's crawl, and they are carrying the freight traffic of the country upon which the people must live and upon which business must prosper or fail. I do not see how it is possible at this day and time for such movement of freight, upon the average, to serve the public interests of the country.

Mr. THOM. There ought to be double tracks.

Mr. SIMS. There ought to be what?

Mr. THOM. There ought to be double tracks so that we would not have to wait for the car moving in one direction to let another one going in the other direction have the right of way for hours. There ought to be more extensive yards; there ought to be perhaps greater traction power; there ought to be greater transportation capacity; and, as I say, that is a question which is confronting the American people to-day. You may rest assured that whatever movement there is of those freight cars is spurred on by the very influence that you are now referring to. Those railroads want to make that money. They are deliberately leaving that car at that rate of speed when they could make more money if they could move it faster. There are physical limitations upon it. You have got men who have grown up with the business, the wisest and best and the most skillful that the country can afford, to try to get that car along, yet their physical obstacles are so great that even the immensely increased revenues they would get from a quicker movement are not open to them, and we are coming here to plead for the credit to enable us to double-track our road, to enable us to increase our sidings and yards, that will enable us to increase our capacity in every respect.

Mr. SIMS. But the fact remains and seems to be proven, and what you have just said, that under present circumstances, with the railroad operatives doing all they can to serve the people by way of moving the products of the country, that its movement is relatively a failure?

Mr. THOM. It is too slow.

Mr. SIMS. It is too slow and does not meet the requirements of business, the requirements of commerce, and that that itself accounts for what is now called the shortage of cars. If these cars were moving on an average of 50 or 52 miles a day, twice as fast as they are, they would naturally carry twice the products they are now

carrying, consequently you would have, with the more rapid movement, a surplus of cars, with the present supply?

Mr. THOM. Possibly, with a greater track capacity and other conditions making such a faster movement possible.

Mr. SIMS. In order that this faster movement may come about the double-tracking, the increasing of facilities for the loading and unloading, and all that kind of thing must necessarily come before this freight can be moved as it should be moved; is that not correct? We must have the instruments you have just detailed in order to enable the country to receive the service it is entitled to receive, and which is necessary?

Mr. THOM. I do not think we can get the best service until its facilities are improved.

Mr. SIMS. Without the best service they can not afford the best national development? It would be utterly impossible?

Mr. THOM. Yes, sir.

Mr. SIMS. Now then, the improvements that would necessarily be required in order to give the best service, not a service that is just simply tolerated, but the best service to the whole, entire country, would call for an expenditure of money, under present conditions, perhaps approaching the present investment, would it not?

Mr. THOM. I think, from investigations I have made—I have not conducted them myself, but I stated here the other day figures about what would be needed. We must remember that the American people up to this point are pretty prosperous; that while their methods of doing business are not in the most perfect condition, yet they prosper; the Nation has grown; the Nation has been developed; their transportation business up to now has been carried on fairly well; there is a great deal which has been done, notwithstanding the situation which you refer to; and we are not preaching, but unless growth is stopped we have got to perfect our facilities for the future.

Mr. SIMS. When growth stops death sets in, does it not?

Mr. THOM. It does, indeed, and that is what I am trying to avoid.

Mr. SIMS. What I am trying to find out is whether you have any estimate at all of the amount of capital that the railroads will require, what you gentlemen call new money, additional capital to include the railway facilities of the country that now exist and add to them such as may be necessary to properly develop undeveloped regions of the country—about what per cent, if you know or have an idea, relative to the present investment will be required in the way of new investment?

Mr. THOM. About 8 per cent annually for the next 10 or 15 years, which would mean about \$1,250,000,000 a year.

Mr. SIMS. In other words, in 12 years it would be double what the present investments are?

Mr. THOM. Yes, sir.

Mr. SIMS. Now I want to bring to your mind a question in regard to that. I am not, of course, a railroad man, but I take it you are correct, or substantially correct, in saying that much money will be required, provided that is done which ought to be done for the public interest for the development of the United States, and not any particular portion of it. I think I heard Mr. J. J. Hill a few years ago make a statement substantially along the lines you have made before a congressional committee of the Senate. Now, then, in order to

secure that much money as a certainty is certainly a very serious consideration as to how to get it, and without acquiring the money the improvements can not be made, and without the improvements the country can not progress?

Mr. THOM. Yes, sir.

Mr. SIMS. And would have to continue in its present unsatisfactory condition?

Mr. THOM. And therefore the time has come for you gentlemen, for you responsible statesmen, to consider whether something must not be done of the far-reaching nature that you have referred to here to provide for those public needs which all of us see are coming.

Mr. SIMS. Should any country as great as the United States is and with the necessity for provision for future development have to depend upon that development alone, upon market conditions for private securities during the long series of years which may be affected by wars and famines and such things as may interrupt the steady flow of private income?

Mr. THOM. I think it can be safely done for a number of years to come. As Mr. Olney stated it in that wonderful memorandum I read here the other day, it may be found on sufficient experience and experiment that Government ownership is the only solution, but in his judgment, and he is a very wise man, the time has not yet come for despair and to conclude there is no other way out of it, and that we ought at the present time assume there is some other way out and try to find and perfect that way.

Mr. SIMS. It is possible for the railroad companies to judge for a period of 12 years in advance what their operating expenses are going to be and what they are going to have to pay in the way of interest in order to secure capital for a new development?

Mr. THOM. Not with certainty.

Mr. SIMS. Not with certainty.

Mr. THOM. There can be a comparatively safe forecast of what is going to happen. We can not tell.

Mr. SIMS. Judging of the future by the past?

Mr. THOM. Judging of the future by the past. That is the only thing we have got to go by.

Mr. SIMS. Now, should the development of a great country like this be a mere speculative matter, that we have got to guess at what things will be in the future?

Mr. THOM. We have done so up to now; and we have gotten along pretty well.

Mr. SIMS. We have struck a snag, so to speak.

Mr. THOM. We have gotten to a time when it is now proper for us to take our bearings and see where we are, and see if something can not be done to improve our situation.

Mr. SIMS. You made a statement yesterday, in substance, that the spirit of adventure had built our railroads; that what was called stock watering had been one of the leading inducements to cause one to make an investment that they would not otherwise have made, but it is perfectly evident that that period has passed, and that the investment in a railway security, especially in stock, must be so attractive to a new purchaser as to enable him to discount the possibilities of what has happened to former investors in railroad stock.

Mr. THOM. You have got to substitute safety.

Mr. SIMS. For uncertainty?

Mr. THOM. For possibilities.

Mr. SIMS. Speculative possibilities?

Mr. THOM. Speculative possibilities. Your system of law has got to find some way of attracting by safety, instead of depending on speculative possibilities.

Mr. SIMS. Then, we have reached that period in our country's system in which we can not possibly rely on further railroad development, on the method that has heretofore been used, for the present development?

Mr. THOM. Yes; we have reached that point.

Mr. SIMS. So there is no use in considering the old methods of offering stock bonuses and speculative methods, or such a high rate of interest as of itself to suggest the insecurity of—

Mr. THOM. Not except as methods of enlightening your future actions.

Mr. SIMS. Yes. But, I do not think, speaking as an individual member of this committee, when it is made so plain by expert evidence—I am regarding you in this matter as a superexpert, as you represent all of the experts combined, and have had the opportunity to confer with them all—that the future development of this country ought to be conditioned upon the sweet will of men who have got money, as private individuals, as to whether or not they will invest it in an industry like the Steel Corporation or in a farm or in railroad stock. If it does, why, then, we may make changes that are temporary. We may benefit present conditions, but why not make things as near a certainty while we are at it as possible?

Mr. THOM. You mean by Government ownership?

Mr. SIMS. There are more ways, but I do not see how you are going to convince the people of Europe, or the people of this country, for that matter, that future railroad stocks and bonds are going to be a better investment than they have been in the past, to such an extent as that they will yield par for a 4 per cent dividend, or 5 per cent, or 6 per cent, unless there is something in the nature of a Government guaranty, something along the line that they can rely on regardless of mismanagement, regardless of the accidents, stock failures, possible wars, the revolutions, and things of that kind affecting our commerce, both domestic and foreign. So, now, it seems that just simply wiping out some of the abuses, and to that extent new methods of regulation that will avoid some of the difficulties that now exist, will be a guaranty that the public will take more than a million dollars of new railroad money for the next 10 years—more than a billion dollars, I mean—now, then, it comes down to the point where the Government must guarantee a dividend sufficient to pay this 4 per cent, or 5 per cent, or whatever it is, or it must go security to the railroads by guaranteeing their bond issues or in some way getting behind the railway—the future railway development of this country, so as to remove that uncertainty which now deters private individuals putting their money into the railroads. Now, it seems to me we have got to consider something on a very broad scale.

Mr. THOM. Judge, my own view was that the country was not ready to guarantee these railroad funds. I may be mistaken about

that. You may be right in thinking that it is, and that is the solution. Being of the judgment that the country was not ready, and it would not do that, that it is not a practical matter.

Mr. ADAMSON. Mr. Chairman, I do not think it is probable that—

Mr. THOM. Let me finish this sentence, please, Judge. Being of that conclusion, our minds naturally went toward the point of trying to improve the conditions under which we might deal successfully with that problem for a while. Now, of course, evolution of railroad questions as of any other great governmental question are not made in a moment. If Government is ready to guarantee the return on these securities that is one thing. Assuming that the Government is not ready for that we have plead for a situation in which we feel that we will be able to perform our public duties by an improved condition of regulation.

Mr. ADAMSON. Mr. Chairman, I suggest that Judge Sims suspend here and conclude his examination to-morrow.

The motion was agreed to and at 1.22 o'clock p. m. the joint committee adjourned until Wednesday, November 29, 1916, at 10.30 o'clock a. m.



# INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT CONTROL AND REGULATION.

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WEDNESDAY, NOVEMBER 29, 1916.

CONGRESS OF THE UNITED STATES,  
JOINT SUBCOMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The joint subcommittee met at 10.30 o'clock a. m., pursuant to adjournment, Senator Francis G. Newlands presiding, also Vice Chairman William C. Adamson.

[Fifty-ninth Congress, first session.]

## REGULATION OF RAILROAD RATES—NATIONAL INCORPORATION OF RAILROADS—NATIONAL OWNERSHIP OF RAILROADS.

SPEECH OF HON. FRANCIS G. NEWLANDS, OF NEVADA, IN THE SENATE  
OF THE UNITED STATES, WEDNESDAY AND THURSDAY, APRIL 4 AND 5,  
1906.

The Senate having under consideration the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission—

MR. NEWLANDS. Mr. President, although I joined in reporting the pending bill from the Committee on Interstate Commerce, I do not regard it as a comprehensive measure. I think that now is the time to secure full and comprehensive action upon the subject of interstate commerce, and that we should not content ourselves with such fragmentary legislation as we have hitherto enacted.

I believe that in legislating upon the subject we should, in the first place, create the great carrying corporations that operate between States. We should then provide against overcapitalization. We should provide for a simple system of taxation by the States that would be mathematically certain in its computation, and we should fix a definite return to the stockholders upon the capital invested. We should also take into consideration the relations of the employees of the railroads to these corporations. We should provide for an insurance fund against accidents and old age, and we should also provide for a conciliation of disputes between carriers and their employees. We should frankly recognize the economic necessity of consolidation and combination and the monopolistic character of the business, and regulate all with a proper regard for the interests of the public served by it, the property rights of the capital employed in it, and the human rights of the labor employed by it.

## CONSTITUTIONAL POWERS.

There can be no question as to the power of Congress. The power is granted in those sections of the Constitution which provide for the national defense, for the regulation of commerce with foreign nations and between the States, and for the establishment of post offices and post roads.

In the exercise of these powers it is absolutely essential that there should be highways. Canals and railroads are highways. The United States, therefore, has the power either to construct such highways or to authorize their construction by agents; and in doing the latter it can create national corporations for that purpose. It is not necessary to cite the authorities, for the power is without question and has been exercised frequently.

Under these powers we are to-day constructing the great Panama Canal and will operate it. Under these powers we have acquired the Panama Railroad and are operating it. Under these powers we incorporated the Pacific railways—the Union Pacific, the Atlantic and Pacific, and the Texas Pacific Railway, the two former running in Territories of the United States, the latter from a point in the State of Texas to a point in the State of California. Under these powers we incorporated the National Maritime Canal Co. of Nicaragua. Under these powers we are to-day in the process of incorporating the proposed canal between Lake Erie and the Ohio River, called, I believe, the Erie and Ohio Canal, which is intended to join the Great Lakes with the Ohio River and the Gulf. The bill for that purpose has passed the House almost without opposition and will probably pass here without serious opposition. The Nation, therefore, under the granted powers, has the right and the power either to construct these great highways or to authorize their construction by corporations created by itself.

## SHALL THE MACHINE BE STATE OR NATIONAL?

Now, it is true that the same machine is used for both State commerce and interstate commerce. The same railroad accommodates both. State commerce is under the control of the State. Interstate commerce is under the control of the Nation. And obviously it would involve economic error to provide for the State commerce a separate machine from that employed in interstate commerce. The same railroads must be employed for both. But the corporation must be created either by the State or by the National Government. If it is created by the State, then the National Government uses a State agency in the exercise of its power over national commerce. If it is created by the National Government, then the State uses a national agency in the exercise of its control over State commerce.

The reason why these corporations have been created by the States is that in the first place the commerce contemplated was entirely within the boundaries of a State, from a point in one State to another point in the same State. But these purely State railroads have now grown into great national systems under conditions of great embarrassment and difficulty; and one can but admire the genius of the men who, struggling against inadequate laws, have been able to build up these great systems of national highways,

intended for national commerce, and embracing the commerce of numerous States and some of them the commerce of the entire Union.

Thus far the Nation has not exercised its full powers as to railroads. For many years it exercised no powers whatever, and it is only within the last 20 years that the constant growth of interstate commerce, as compared with purely local or State commerce, has forced the question upon public consideration. Railroads at first were purely State institutions intended only for transportation within State boundaries, but they have now, through consolidation, merger, lease, or community of interest, grown into great institutions of national scope and character, whose traffic is conducted without regard to State boundaries—whose capital embraces over one-tenth of the wealth of the country, and whose employees number about one-twelfth of its effective labor.

Had such growth been contemplated doubtless a national incorporation act would have been provided, but as it is the growth has been accomplished under inadequate and lax State legislation, under which simplicity of organization and operation is impossible. The weakness of all national legislation thus far has been that it has not at the very start created national machinery for incorporating the artificial beings called upon to exercise the great national function of interstate transportation. It has been content, while permitting State corporations to exercise this function, to regulate its operation. The result has been that State machines are performing national functions, and are inadequate to do so without complexity of organization, baffling to the mind of a regulating Interstate Commerce Commission.

As the result of this experience legislation has been a growth. Had we contemplated in the first instance that national commerce would absolutely dwarf State commerce, and that both State and national commerce would be conducted upon these great machines of transportation, we would doubtless have seen the wisdom of having the greater sovereignty create the machine that is to do the business of both and not have the lesser sovereignty, whose jurisdiction is confined to a contracted area, create that machine, the interstate commerce is three-fourths of the commerce of the entire country. The State commerce is only one-fourth. We were told in the Nebraska case that of all of the commerce of the railroads of that State one-twentieth only was State commerce, and all the balance was interstate. It is clear, therefore, that we ought to have national machinery for the transaction of this commerce, that this is the time for it, and that we will never have a better opportunity for creating it.

The passage of a national incorporation act would require the addition of only 15 or 20 sections to this bill. The pending bill simply provides for the regulation rates. We could, right in this bill, furnish the machinery for the incorporation of national corporations, and we could make this legislation either coercive or persuasive. In my judgment, at first it should be made merely persuasive. Later on it might be deemed wise to apply coercive legislation, as we did when the national banks were created, by taxing the State note issues 10 per cent. In using the term "coercive," I do not wish to imply that Congress could force State railroads to come under national

charters. What I mean is that we could so cripple them in their operations in interstate commerce as to make them eager to avail themselves of national charters, and even then, of course, the consent of the States to the change would be required—a consent which I believe could be obtained with as little difficulty as that now obtained in the various States by corporations organized under the laws of sister States.

This coercion could be applied in different ways. It could be applied by absolutely preventing State corporations from engaging in interstate commerce, or it could be applied by imposing such a tax upon the commerce carried by such corporations as to be practically prohibitory of their engaging in it. But, in my judgment, the legislation now should be merely persuasive and should offer such obvious advantages to these great systems, whilst at the same time properly protecting the public, as to induce them to incorporate under its provisions.

#### MUST CONGRESS FIX THE STANDARD FOR RATES?

Mr. President, as to the pending bill, it seems to me it is weak in that it does not provide a rule which is to control the Interstate Commerce Commission in regulating rates, and I have some doubt as to whether we can, under the Constitution, grant this power to a mere administrative commission unless we prescribe the rule, so that their action will be largely one of computation and mere administration, not involving legislation discretion. It is contended that the legislature can delegate this power to a commission by providing a rule or standard for its action, and this contention seems to be upheld by a great many decisions relating to the States.

Now, what rule or standard does this bill provide? It simply declares that the rates shall be just and reasonable, and it is said that is the rule which the commission is to follow. But Congress could not fix, or confer upon a commission the power to fix, unjust and unreasonable rates. Under the limitations of the Constitution the only power Congress itself has is to fix just and reasonable rates, and when it transfers that power to a commission, does it not transfer to the commission all the power it has?

It may be that the courts will finally hold that it is so difficult for a legislative body to exercise this power directly that it is warranted in creating an administrative board for the purpose. If that is so, legislation of this kind will be sustained, in my judgment, not upon the ground that it fixes the rule for the commission's action, but upon the ground that Congress can grant to a commission all the power that it has in fixing the rates for interstate commerce.

#### VALUATION OF RAILROADS AND RETURN.

It seems to me that in this very bill, outside of the question of national incorporation, we could provide the standard and we could follow the rule laid down in *Smyth v. Ames*, the Nebraska Case (169 U. S., 546), in which the Supreme Court says:

We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the

convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under the particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth.

We could provide that the Interstate Commerce Commission should value the property of all these railroads, should make a present valuation, and to that should be added such additional investments as may be made in the future. We would then have the basis of value. We could also provide in this bill that the Interstate Commerce Commission, in exercising the power of fixing rates, should so adjust rates as to yield a return upon such value of not less than a certain percentage—not less than 5 or 6 per cent or not less than 4 per cent or more than 6 per cent.

If the bill provides the machinery by which the value of the railway property can be ascertained and also fixes the return upon that value, we then have a rule established by Congress which involves simply mathematical computation upon the part of the Interstate Commerce Commission. Of course, if we fix the rule for the exercise of the judgment of the commission the bill would not be so open to constitutional objections as it is now.

Mr. President, I prefer that valuation of the property of these railroad corporations which would be exhibited in a fair capitalization. I should prefer legislation which would provide for the national incorporation of these great railways and the issue of bonds and stock representing their actual value and cash outlay, so that wherever the question of the regulation of rates comes up, either by State commissions or national commission, the factor of value would be omnipresent in the capitalization of the roads in stock and bonds.

But if we are not to have comprehensive legislation of that kind, then the next best thing is to provide in this bill for a valuation of the roads by the Interstate Commerce Commission. A valuation has already been made by the Census Bureau, based simply upon the existing income of the roads, and they have made a valuation of about eleven billion dollars, I believe, approaching within a billion or so of the existing capitalization of the roads, which it is claimed is exaggerated.

Mr. FORAKER. Within 10 per cent.

Mr. NEWLANDS. Within 10 per cent, the Senator from Ohio says. Now that is based upon income, but there can be another kind of valuation, following the principles laid down in *Smyth v. Ames*, by considering first the actual cost of reproduction; second, the cost of the road to the corporation; third, the market value of the stock and bonds, and fourth, the value as determined by existing income, for the Supreme Court says that all these factors can be taken into consideration.

If the Interstate Commerce Commission, then, should be authorized in this bill to provide for the employment of experts to

make a valuation of the roads, we would have the basis for sound action in the regulation of rates; and if we should add to that the legislative will as to the return upon the capital invested, we would have two factors in the problem determined by Congress. We would have the rule established and the rest would be a mere matter of mathematical calculation.

#### VALUATION THROUGH NATIONAL INCORPORATION.

So far as this bill is concerned, I would suggest that a provision be inserted in it for ascertaining the value of the railroads engaged in interstate commerce and that a provision also be made fixing the return in the shape of interest upon such value.

But I believe that we should also add to this bill provisions for the national incorporation of railways.

In such additional provisions we could declare that no stocks or bonds should be issued, either for construction, extension, or improvement of such railways, or for the purchase of connecting or intersecting lines except for full value in money or property, or without the approval of the Interstate Commerce Commission. In this way we could guard against overcapitalization.

The President in his message has called attention to the evils of overcapitalization in the following words:

Of these abuses perhaps the chief, although by no means the only one, is overcapitalization—generally itself the result of dishonest promotion—because of the myriad evils it brings in its train; for such capitalization often means an inflation that invites business panic; it always conceals the true relation of the profit earned to the capital actually invested, and it creates a burden of interest payments which is a fertile cause of improper reduction in or limitation of wages; it damages the small investor, discourages thrift, and encourages gambling and speculation; while, perhaps, worst of all is the trickiness and dishonesty which it implies—for harm to morals is worse than any possible harm to material interests, and the debauchery of politics and business by great dishonest corporations is far worse than any actual material evil they do the public.

This measure does not reach this abuse, and it should be amended so as to prevent it.

#### DUTY OF CONGRESS TO FIX THE RETURN.

We could also limit in this bill the rate of interest to be received by the investors upon such valuation, and thus in the future the great increase of business which is induced by the extension of the railroads and the expansion of commerce will tend automatically either to the betterment of the roads or to a reduction in rates.

It has been said that it is unfair to limit in any way the returns of these corporations; that we do not limit the returns of people generally in business or of corporations engaged in business. But we must recollect that ordinarily occupations and businesses are not of public nature, and the public has no right to regulate or control them. This regulation and control arises from the fact that the highways are public highways, the function a public function, and the Government simply intrusts the conduct of this function to certain agencies, and all the agent is entitled to under the decisions is a fair return upon the amount he has invested. If that is a fact, it is

competent for Congress to fix that return and not leave it to chance or accident.

Beyond this, if we are careless regarding the return, and allow a corporation to receive 10, 15, or 20 per cent instead of 5 or 6 per cent interest, the result will be that the stocks will rise in the market, their value being based upon income, and if you should permit the \$10,000,000,000 now claimed to be invested in these great highways in this country to receive an interest of 10 per cent instead of an interest of 5 per cent, you would find immediately in the market that these securities would be quoted at \$20,000,000,000, and if you allow interest at 15 per cent you would find the market valuation would be \$30,000,000,000, and if you allow 20 per cent you would find the market value would be \$40,000,000,000.

Now, then, are we to assume that at different stages in the regulation of rates the value of these properties is to vary with the income? If we do there will be no limit to their value, for if there is no restriction on the return there will be no limit to the value. If to-day these railroads are valued at \$10,000,000,000, based upon existing income, they must be valued at \$20,000,000,000 if the return is doubled. Thus will the value increase proportionally to the income, and if we do not apply a fair restrictive regulation of the rate of interest we will bring about a serious readjustment of values all over the country.

The cry will be raised by investors that the Government has permitted the securities to reach this high value, just as it is claimed to-day that the value of these properties is not necessarily the value actually put into them by experts but the value based upon income. The return must be fixed therefore either by the commission or by Congress, and Congress is just as competent to fix it as is the commission. State legislatures already exercise the power of regulation over the rate of interest. Throughout the United States the legal rate of interest does not exceed 6 per cent.

Those laws are intended to guard against usury. A law of this kind is intended to guard against extortion. Unless the return is fixed by somebody, either by the commission or by the Congress, we will have varying valuations running through the years.

#### AUTOMATIC ADJUSTMENT VERSUS COMMISSION ADJUSTMENT.

Mr. President, it seems to me exceedingly important that we should fix this rule of valuation and return, simply because it will work automatically toward a gradual reduction in rates. I believe myself that under the pending bill the commission will be overwhelmed with work. I have been impressed with the evidence of the traffic managers before our committee, the ceaseless vigilance which they employ in moving the traffic, in providing a market place for the surplus of the country which they serve, and in bringing from the outside the things needed by the communities which they serve.

They have many thousand of men in that service—the great traffic managers at the head of each system, the assistant traffic managers, the district traffic managers, and then every agent and every station is a part of this great machinery for the adjustment of rates, not simply as a matter of profit to the corporation, but as a matter of

serving the requirements of the communities through which the railroads run. In this adjustment much elasticity of action is required.

I do not believe that any board of seven men can exercise intelligently all the powers that are exercised by these thousands of competent, skilled, trained traffic managers and their assistants, and I believe if the commission attempts it, it will be overwhelmed, and in the end it will either be inert and inactive, or it will bring the adjustment of rates practically to a mileage basis.

It is true that these rates are to be adjusted only upon complaint; but all the rates can be complained of. An entire schedule can be complained of. We are told that within a single year 160,000 different schedules have been filed in the office of the Interstate Commerce Commission, each one of these schedules involving varying classifications and varying rates. Any one or all of these schedules can be challenged, and if challenged the challenge must receive the consideration of the Interstate Commerce Commission. Will it be possible for it then to consider all the cases? It will be obliged to adopt some rule, and the easiest rule in the end will be the mileage rule, with modifications according to distance.

The advantage of fixing a return of a certain percentage upon a valuation of the property is that it protects the investors in these great public securities, and it forces a limitation of profits, so that automatically, as the receipts of the company increase, the rates will be reduced.

All that the average investor, outside of the speculator, asks is a fair return upon his money. The great banking institutions in New York that negotiate the securities of these great corporations rely upon other people's money for the exercise of their power. We have had illustrations of that in recent investigations. Hundreds of millions of dollars collected from all over the country by the insurance companies, or the savings of the people in savings banks and trust companies, supply the funds which are invested in a large proportion of these securities.

The average investor to whom these securities are presented looks simply to the rate of interest, and if he gets 4 or 5 per cent he is willing to pay par for the securities. All the real investors require is a fair return of from 4 or 5 per cent, and the proposed limitation of profits is absolutely fair to them.

#### ELIMINATES THE SPECULATIVE ELEMENT.

It is said that if this return is limited there will be no inducement to these great railway promoters to extend the roads; that it is the speculative idea that attracts them into these operations. That may possibly be true as to the great promoters who have made millions and hundreds of millions out of these operations, but it is not true as to the people themselves. All they expect is 4 or 5 per cent, and they are willing to put their money into any investment that will secure that return.

I do not believe, Mr. President, that in order to stimulate enterprise in this country in railroad building it is necessary to hold up before some man or some set of men a prize of from ten million to one hundred million dollars for the operation. I think that if we protect the bondholders and stockholders by fixing a return of this kind, it

will lead to the elimination of the speculative element in railroad operations, but I do not regard that as of consequence, for the speculative element has little to do with material railroad building. You will find that the men who really conduct this business, the men who really built the railroads, the men who really manage them, are men of moderate means, who are content with moderate salaries, and yet do their work faithfully and well.

We find in the Government service to-day—in the scientific branches of the Government, such as the Geological Survey—the highest standard of efficiency and energy, accompanied by a public spirit which seems to elevate their action above that of men not employed in the public service. I have not the slightest doubt but that railroad enterprises will be just as well conducted without retaining the aid of the speculative element.

#### TAXES SHOULD BE CERTAIN.

In such an incorporation act we could also provide with certainty as to taxes. One of the great difficulties of the existing condition is that although these great systems are really national, embracing in their operations a number of States, they are subject to the varying rules of 45 different States as to taxation. In some States the assessment is made at the assessed value simply of the tracks and the right of way. In other States the assessment takes into consideration the value of the franchise.

In some States it is contended that the assessment should be the combined market value of the stocks and bonds. In addition to all this the stocks and bonds themselves in the hands of their holders can be separately assessed and taxed, a form of double taxation.

We have in this country about \$12,000,000,000 of railroad stocks and bonds. The market value is, say, about \$10,000,000,000. If the highest rule obtains, these railroads could be assessed for \$10,000,000,000, and they would have to pay an average tax of  $1\frac{1}{2}$  per cent upon that value, or \$150,000,000.

The railroads to-day are paying \$56,000,000 per annum. If this rule, which has been upheld by the Supreme Court of the United States, were to prevail throughout the country the taxes of the railroads would be immediately raised from \$56,000,000 to \$150,000,000 per annum, an increase of about \$100,000,000.

One hundred million dollars is 1 per cent upon the market value of the entire bonds and stocks of the country. That would be immediately taken out of the returns to the stockholders unless the rates were so increased as to make up the extra tax charge. So if you raise the taxes from \$56,000,000 to \$150,000,000, the taxes which the public receive, then you must increase the rates to the extent of \$100,000,000 so that the corporations can pay these taxes or else you must take the \$100,000,000 out of the profits of the stockholders and diminish their return to that extent below the normal rate of interest.

But under the existing system the States could not only tax the railroads themselves \$150,000,000 annually, thus trebling their taxes, but they could assess every bond and stock in the hands of the holders, for they are, under the laws, regarded as personal property and subject to taxation. It is true that they generally escape assessment, but if they were assessed at their market value, \$10,000,000,000, it would mean that \$150,000,000 more in taxes could be secured from them.

If this system were carried out to its logical conclusion, where would there be any security for the stockholders? With \$150,000,000 taken from the corporations of which they are stockholders and bondholders and \$150,000,000 taken annually from the bondholders and stockholders individually as owners of these securities, it would be utterly impossible for us to get people to invest in railway securities; and yet this wide range of taxation is possible under existing conditions; and it is a fruitful source of evasion, fraud, and political corruption.

#### WHY RAILROADS ARE IN POLITICS.

The railroads find it utterly impossible to keep out of politics simply because their property is between the upper and nether millstone and can be ground to destruction between the rate-regulating power and the taxing power of the public. In the famous case of *Munn v. Illinois* the doctrine was first asserted in this country by the United States Supreme Court that where a person devotes his property to a public use he grants to the public an interest in that use and must submit to regulation by the public; that if he is dissatisfied with the regulation he can discontinue the use, but so long as he continues the use he must submit to the regulation. In answer to the objection that such legislative power could be abused the court stated that the only remedy for legislative abuses was at the polls. The railroads have been at the polls ever since. Their taxes are a matter of political control. Their rates are a matter of political control. How can we expect \$10,000,000,000 to keep out of politics when that \$10,000,000,000 is completely subject to political control in every State of the Union?

It is absolutely essential, therefore, for the railroads to be in politics, and they go into politics as they go into everything else, in a systematic and businesslike way. There is no sentiment about it. They go into politics to protect their property, and they seize as swiftly as they can the entire political machinery of a State.

It is easier to do that than it is to try to influence the people at the polls. What chance has a great corporation at the polls in a contest with the people? They are compelled to be in politics, but they can only be influential in politics by indirection. They deem it, therefore, absolutely essential to seize wherever they can the political machinery of both parties.

With their ramifications, with their army of lawyers, traffic managers, and agents in every community, and with their 1,200,000 employees—about one-tenth of the effective labor of this country—they have all the factors of a strong political machine, for it is evident to one who has had experience in these matters that although the men employed by the railroads often have disputes with the railroads regarding their hours and compensation, yet that whatever their disputes may be they always stand in with the railroads when the common fund from which wages and dividends are paid is in danger.

We have had an illustration of that in this legislation. The employees of the railroads throughout the country have petitioned Congress against the regulation of rates upon the ground that it may endanger their compensation, and whenever it is known that the man

offering himself for a public office is opposed to a railroad, either upon the matter of taxation or upon the matter of rates, it is not a difficult thing for the railroad to array all of its employees against such a man. So the railroads have been invited to go to the polls, and they are going to the polls in the only effective way, by controlling the political machinery of local conventions and of State conventions, and even the national conventions themselves.

There is not a man who is familiar with national conventions who does not know how large a factor the railroads have been in selecting delegates to them. We will find that to be the case hereafter, when we give this extraordinary and unrestrained power to a commission, giving it the full discretion that Congress itself has, without imposing any rule whatever of protection to the railroads. We will find them showing great activity in national politics and in the election of Presidents, as they have done in the election of mayors, of boards of supervisors, of county commissioners, of governors, of boards of equalization, and of State commissions.

It seems to me that that is an additional reason why we should put in this bill the rule that is to guide the commission in its work, for it may be that one of these days this commission will be a controlled commission, just as the State commissions have been in many instances. We can easily imagine a contest in either party where two or three men of equal ability, equal capacity, and of equal popularity are before a national convention as candidates for the Presidency. We can imagine how the railroads, massing their power for one candidate, may secure him the nomination, and we can imagine how the understanding might be that the railroads would be consulted as to the selection of this Interstate Commerce Commission. Of course it would be done in the most delicate way; such things are always done in a delicate way; but when a man receives the support of a great interest in a convention for so high a nomination and accepts it, the chances are that his judgment will be in some degree swayed by that fact.

Then we will assume that the national conventions of both parties have met and selected their candidates, the contest is a close one and the candidates are equally popular before the country. We can imagine how effective the railroad strength would be if turned over to one of those candidates, and we can understand how under such conditions the railroads might not find it difficult to secure assurances, directly or indirectly, as to the composition of the Interstate Commerce Commission.

The character of the men appointed might be above reproach, but it is easy to understand how in the end the appointment of men of a certain inertia, inactivity, indisposition to move or to act, might condemn the commission to uselessness. On the other hand, it is possible that in periods of excitement the commission might be composed of prejudiced and violent men, who would imperil the interests of investors.

So it seems to me incumbent upon us, in the common interest, to put in this bill fixed rules governing taxation and return on capital, so that the law itself will adjust with certainty the relations of the carriers to the public, protecting the carriers from spoliation and the public from extortion.

Now, Mr. President, in this matter of taxation, to which I was referring, I think that taxation should be absolutely certain, so that the railroads will know what they have to pay, so that the States will know what they are to receive, and in order that the railroads may be protected from the blackmailers and the cranks and the honest reformers throughout the entire country, each of whom is seeking to change the existing system of taxation in every locality and in every State, some men honest and probably right in their views, some of them cranks, some of them joining with the reformers and with the cranks simply for the purpose of blackmailing. We have recently had evidence of the kaleidoscopic character of railroad taxation by the States. A few days ago the Post stated that Gov. Dawson, of West Virginia, was in Washington making inquiries as to the recent census valuation of railroads in West Virginia with a view to tax reform in that State. Similar movements are on foot in many of the States, and the Supreme Court has recently handed down a decision affirming a recent statute of Michigan which trebles the existing railroad taxes of that State.

It is too much to demand of human nature to expect the railroads under those conditions to keep out of politics. All of us who have been familiar with politics know of conventions where it was whispered around at the very beginning of the session that the railroads demanded the tax commission, or the railroad commission, or both, and where the party managers knew they had a fight on their hands if they did not accede. We will find these same conditions extending to national politics if we do not take care.

#### A FAIR AND UNIFORM RULE OF TAXATION.

Now, what is a fair rule of taxation? I think it is generally agreed that the fairest rule is a percentage tax upon gross receipts. A tax of 4 per cent upon all the gross receipts of all the railroads of the country, which now aggregate about \$2,000,000,000, would be \$80,000,000. A tax of 5 per cent would yield \$100,000,000. The present taxes paid by all the railroads amount to about \$56,000,000, or about 3 per cent upon their gross receipts. Here let me say that these railroads, forced into politics to protect themselves against excessive taxation, finally end in evading taxation themselves. Having got the power, having secured the party machinery, having secured control of the officials who control taxes, they naturally seek to diminish their own taxes, and so, though originally going into politics for protection, they remain in politics for profit and seek to escape their fair proportion of the burdens of government.

As to a gross-receipt tax, a tax of 3, 4, or 5 per cent upon the gross receipts is mathematically ascertainable. The gross receipts are published every year by the Interstate Commerce Commission. There is no way of concealing them. The tax would be a matter of mere computation, and would not involve the exercise of discretion by the taxing officials of the various States, as the present system does.

The National Government can, in incorporating interstate railroads, either exempt them as national instrumentalities from State taxation or it can fix the rule for their taxation by the States.

TAXATION OF NATIONAL INSTRUMENTALITIES—POWER OF CONGRESS TO  
FIX RULE OF TAXATION BY STATES.

When the Government condemns for public use or constructs a post road, that moment the post road is free from State taxation. If the Government buys real estate and builds a post office, that moment the real estate and building are exempt from State taxation. If the National Government should construct railroads for the purpose of carrying out its granted powers, such railroads would be exempt from State taxation, just as post offices and customhouses are, and just as post roads would be if built. If it intrusts such work to a corporation created by itself, the corporation is the agent for the purpose of carrying out governmental powers, and none of its powers or operations can be taxed by a State. If it selects certain property as the instrumentality or means through which its powers are to be exercised, such property would also be exempt from State taxation, for just as the powers and the operations of the Government agent would be exempt from all local taxation, so also would be the property selected as the chosen instrument for the exercise of those powers. The powers and operations would be exempt without any express declaration to that effect by Congress. A different rule would probably apply to the property selected as the chosen instrument for the exercise of a national power. In that case it would be necessary to show unmistakably that the property was selected as the instrumentality, and that it was the purpose of Congress that it should be taken out of the domain of State taxation.

The proper organization of a system of transportation is just as essential to the welfare of the people as is the creation of a proper financial system. In the early history of the country it was determined to establish a United States bank to promote the fiscal operations of the Government. The State of Maryland sought to impose a tax upon the notes of a United States bank in Maryland. The notes were property just as a railroad is property, and yet the court held that the State of Maryland could not in the exercise of its taxing power tax those notes. It is true that in that case Chief Justice Marshall held that so far as the bank building was concerned the exemption would not apply, but he so held upon the ground that the ownership of the bank building was not essential to the operation of the bank; the bank could be conducted upon leased property, and therefore the bank building could not be regarded as a national instrumentality for the purpose of carrying out the powers conferred by the National Government upon the bank, but all property absolutely essential to the powers conferred upon the bank, such as promissory notes, bills of exchange, etc., were exempt from State taxation.

It should be noted that a railroad is a very different property from a bank building. The ownership of a bank building is not essential to the operation of a banking corporation. The ownership of a railroad is absolutely essential to the operation of a railroad corporation. If Congress, therefore, under the interstate-commerce power, authorizes the construction of a railroad, it makes that railroad the instrumentality for the purpose of carrying out its power—the means of

the exercise of the power itself. The operation of the railroad can not be segregated from the right of way, the track, the station, buildings, and the general equipment of the road. If they belonged to the Government they would be exempt from State taxation, and if the Government selects as its agent a corporation of its own creation and makes its property the instrumentality for the exercise of governmental powers, and unmistakably shows its intention that this instrumentality shall not be embarrassed by State taxation, clearly the property selected as the instrumentality must be as free from taxation as the powers themselves.

In this connection it is proper to say that my contention as to the right of the United States to exempt a railroad incorporated under a national law for interstate commerce, from State taxation is not urged for the purpose of freeing such roads from sharing the burden of government, but simply for the purpose of securing a uniform rule of taxation by the States, with a view to facilitating the public regulation of railroad corporations in which the fixed charge of taxes is an important consideration.

Under the rule laid down in *Van Allen v. The Assessors* (3 Wall., 573), it would be competent for the Congress of the United States to submit the property of national railroads engaged in interstate commerce to State taxation, first prescribing the rule by which such property should be taxed. In this way Congress could secure uniformity and certainty in the taxes.

#### THE AUTHORITIES.

In *Luxton v. North River Bridge Co.* (153 U. S., 525), it was held that, under the power to regulate commerce among the States, Congress may create a corporation to build a bridge across navigable water between two States, and to take private land for that purpose, making just compensation. And Mr. Justice Gray, delivering the opinion of the court, said:

The Congress of the United States, being empowered by the Constitution to regulate commerce among the several States and pass all laws necessary and proper for carrying into execution any of the powers specifically conferred, may make use of any appropriate means for this end. As said by Chief Justice Marshall, "The power of creating a corporation, though appertaining to sovereignty, is not, like the power of making war, or levying taxes, or of regulating commerce, a great substantive and independent power which can not be implied as incidental to other powers or used as a means of executing them. It is never the end for which other powers are exercised, but a means by which other objects are accomplished." Congress therefore may create corporations as appropriate means of executing the powers of government, as, for instance, a bank for the purpose of carrying on the fiscal operations of the United States, or a railroad corporation for the purpose of promoting commerce among the States. (*McCulloch v. Maryland*, 4 Wheat., 316, 411, 422; *Osborn v. Bank of U. S.*, 9 Wheat., 738, 861-873; *Pacific R. R. Removal Cases*, 115 U. S., 1, 18; *California v. Pacific R. R.*, 127 U. S., 1, 39.) Congress has likewise the power, exercised early in this country by successive acts in the case of the Cumberland or National road from the Potomac across the Alleghenies, to the Ohio, to authorize the construction of a public highway connecting several States. See *Indiana v. United States*, 148 U. S., 148. (153 U. S., 529.)

In *California v. Pacific Railroad* (127 U. S., 1) it was directly adjudged that Congress has authority, in the exercise of its power to regulate commerce among the several States, to authorize corporations to construct railroads across the States, as well as the Terri-

tories of the United States; and Mr. Justice Bradley, speaking for the court, and referring to the acts of Congress establishing corporations to build railroads across the continent, said:

It can not at the present day be doubted that Congress, under the power to regulate commerce among the several States, as well as to provide for postal accommodations and military exigencies, had authority to pass these laws. The power to construct, or to authorize individuals or corporations to construct, national highways and bridges from State to State is essential to the complete control and regulation of interstate commerce. Without authority in Congress to establish and maintain such highways and bridges it would be without authority to regulate one of the most important adjuncts of Congress. This power in former times was exerted to a very limited extent, the Cumberland, or National, road being the most notable instance. Its exertion was but little called for, as commerce was mostly then conducted by water, and many of our statesmen entertained doubts as to the existence of the power to establish ways of communication by land. But since, in consequence of the expansion of the country, the multiplication of its products, and the inventions of railroads and locomotion by steam, land transportation has so vastly increased, a sounder consideration of the subject has prevailed and led to the conclusion that Congress has plenary power over the whole subject. Of course, the authority of Congress over the Territories of the United States and its power to grant franchises exercisable therein are, and ever have been, undoubted. But the wider power was very freely exercised, and much to the general satisfaction, in the creation of the vast system of railroads connecting the East with the Pacific, traversing States as well as Territories, and employing the agency of the State as well as Federal corporations. (127 U. S., 39-10.)

*McCulloch v. Maryland* (4 Wheat., 485).—This case decided that a stamp tax on the notes issued by a Federal bank was a tax on the operation of a Federal agency and therefore void. The essence of the decision is the impotency of the States to burden the operations of the Federal Government.

As to a tax on property as distinguished from operations, the court said, in conclusion:

The States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government. \* \* \*

This opinion \* \* \* does not extend to a tax paid by the real property of the bank, in common with the other real property within the State, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the State.

*Thompson v. Pacific Railroad* (9 Wall., 579).—This was a case of taxation by a State of a railroad acting under a Federal charter, as well as a State charter. The court said (p. 590):

We do not think ourselves warranted, therefore, in extending the exemption established by the case of *McCulloch v. Maryland* beyond its terms. We can not apply it to the case of a corporation deriving its existence from State law, exercising its franchise under State law, and holding its property within State jurisdiction and under State protection.

In this case the court considered the possibility of what would happen if Congress should do what it had not done, to wit, explicitly exempt its agent from taxation. The court said (p. 588):

We do not doubt, however, that \* \* \* Congress may \* \* \* exempt, in its discretion, the agencies employed in such service from any State taxation which will really prevent or impede the performance of them.

But can the right of this road to exemption from such taxation be maintained in the absence of any legislation by Congress to that effect?

Throughout this case it will be noted that the court is careful to say that the case did not present the feature of any positive attempt on the part of Congress to exempt the property from State taxation, and the inference is clear that in such a case the exemption would have been operative and the State tax invalid.

The case emphasizes the difference between property and the operations of an agent of the Government, as follows (p. 591):

We fully recognize the soundness of the doctrine that no State has a "right to tax the means employed by the Government of the Union for the execution of its powers." But we think there is a clear distinction between the means employed by the Government and the property of agents employed by the Government. Taxation of the agency is taxation of the means; taxation of the property of the agent is not *always, or generally*, taxation of the means.

No one question that the power to tax all property, business, and persons, within their respective limits, is original in the States and has never been surrendered. It can not be so used, indeed, as to defeat or hinder the operations of the National Government; but it will be safe to conclude, in general, in reference to persons and State corporations employed in Government service, that *when Congress has not interposed* to protect their property from State taxation, such taxation is not obnoxious to that objection.

Again obviously intimating a different opinion had Congress expressly established such exemption.

*Railroad Company v. Peniston* (18 Wallace, 5).—The case arose out of the claim on the part of the State of Nebraska of the power to tax roadbed, depots, wood stations, water stations, and other realty, telegraph poles, telegraph wires, bridges, boats, papers, office furniture and fixtures, moneys and credits, movable property, engines, etc., of the Union Pacific Railroad Co.

The company was created by the act of Congress of July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Mississippi River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes." Various amendments were made to the original act at later sessions of Congress, but neither in the original act nor in any amendment was any provision made by Congress respecting the taxation of it or its property by the States through which the road might run.

The tax was resisted by the company on the ground that, having been incorporated by Congress—

The State of Nebraska has no power to subject to taxation for State purposes the roadbed, rolling stock, and other property necessary for the use and operation of the road, such power resting exclusively in the Government of the United States.

It was distinctly stated by Mr. Chief Justice Strong, who delivered the opinion, that—

The States may not levy taxes the direct effect of which shall be to hinder the exercise of any powers which belong to the National Government. The Constitution contemplates that none of those powers may be restrained by State legislation (p. 30).

After referring to the legislation creating the Union Pacific road and adverting to the objects and purposes of that legislation, the justice further said (p. 32):

Admitting, then, fully, as we do, that the company is an agent of the General Government, designed to be employed, and actually employed, in the legitimate service of the Government, both military and postal, does it necessarily follow that its property is exempt from State taxation?

Emphasizing the difference between the operations of an agent and the property thereof, Justice Strong said (p. 33):

It may therefore be considered as settled that no constitutional implications prohibit a State tax upon the property of an agent of the Government merely because it is the property of such an agent.

Then, after consideration of the various cases bearing upon the general question, Justice Strong summed up as follows (pp. 36-37):

It is therefore manifest that exemption of Federal agencies from State taxation is dependent, not upon the nature of the agents or upon the mode of their constitution or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the Government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of Federal powers.

Eight justices heard this case, and the opinion of the court upholding the validity of the tax was concurred in by four of them. A fifth, Justice Swayne, concurred in the judgment, but said:

I see no reason to doubt that it was the intention of Congress not to give the exemption claimed. The exercise of the power may be waived, but I hold that the road is a national instrumentality of such a character that Congress may interpose and protect it from State taxation whenever that body shall deem it proper to do so.

So that Justice Swayne would have decided against the majority of the court had there been exempting legislation. Two other justices flatly dissented, giving an opinion to the effect that such State taxation was invalid, even in the silence of Congress. And the eighth justice merely remarked: "I dissent from the opinion of the court."

Thus all that can be claimed from this decision as to the power of Congress to exempt a corporation from taxation by affirmative legislation is that the court was evenly divided, and even this can not be fairly claimed, for the case of exempting legislation was not before the court, and the opinions of the four justices who upheld the tax do not contain a word which denies the power of Congress to exempt the property which it expressly declares to be its chosen instrumentality.

Mr. Justice Bradley, for himself and Mr. Justice Field, delivered a vigorous dissenting opinion, in the course of which he said (p. 47):

The Union Pacific Railroad Co., therefore, being a United States corporation created for national objects and purposes, and deriving its existence, its powers, its duties, its liabilities from the United States alone; being responsible to the United States, now as formerly, for a whole congeries of duties and observances; being subjected to the forfeiture of its corporate franchises, powers, and property to the United States and not to any individual State; being charged with important duties connected with the very functions of the Government, every consideration adduced in the cases of *McCulloch v. Maryland* and *Osborn v. The Bank*, would seem to require that it should be exempt not only from State taxation, but from State control and interference, except so far as relates to the preservation of the peace and the performance of its obligations and contracts. In reference to these and to the ordinary police regulations imposed for sanitary purposes and the preservation of good order, of course, it is amenable to State and local laws.

As an instrument of national commerce as well as Government operations, it has been regulated by Congress. Can it be further regulated by State legislation? Can the State alter its route, its gauge, its connections, its fares, its franchises, or any part of its charter? Can the State step in between it and the superior power or sovereignty to which it is responsible? Such an hypothesis

it seems to me, is inadmissible and repugnant to the necessary relations arising and existing in the case. Such an hypothesis would greatly derogate from and render almost useless and ineffective that hitherto unexecuted power of Congress to regulate commerce by land among the several States. If it be declared in advance that no agency of such commerce, which Congress may hereafter establish, can be freed from local impositions, taxation, and tolls, the hopes of future free and unrestricted intercourse between all parts of this great country will be greatly discouraged and repressed.

Again:

But it is contended that the laying of a tax on the roadbed of the company is nothing more than laying a tax on ordinary real estate, which was conceded might be done in the case of the United States Bank in reference to its banking house or other lands taken for claims due in the course of its business. This is a plausible suggestion, but, in my apprehension, not a sound one. In ascertaining what is essential in every case, respect must always be had to the subject matter. The State of Maryland undertook to tax the circulation of the United States branch bank established in that State by requiring stamps to be affixed thereto; the State of Ohio imposed a general tax of \$50,000 upon the branch established therein. These taxes were declared unconstitutional and void. They impeded the operations of the bank as a financial agent. Real estate was not a necessary appurtenant to the exercise of the functions of the bank. It might hire rooms for its office, or it might purchase or erect a building.

But the primary object of a railroad company is commerce and transportation. In its case a railroad track is just as essential to its operation as the use of a currency or the issue or purchase of bills of exchange is to the operations of a bank. To tax the road is to tax the very instrumentality which Congress desired to establish, and to operate which it created the corporation.

Besides, all that a railroad company possesses in reference to its roadbed is the right of way and the right to use that land for the purpose of way. This is a franchise conferred by the Government and inseparately connected with the other franchises, which enables it to perform the duties for the performance of which it was created. Any estate in the land—the soil, the underlying earth—beyond this belongs to the original proprietor, and that proprietor in the present case is the Government itself. So that, look at it what way we will, there is no room for the taxing power of the State. The estate in the soil can not be taxed, for that remains in the United States; the franchise of right of way and materials of track can not be taxed, because they are essentially connected with and form a part of the powers, faculties, and capital by which the national purposes of the organization are accomplished.

If the roadbed may be taxed, it may be seized and sold for nonpayment of taxes—seized and sold in parts and parcels, separated by county or State lines—and thus the whole purpose of Congress in creating the corporation and establishing the line may be subverted and destroyed.

In my judgment, the tax laid in this case was an unconstitutional interference with the instrumentalities created by the National Government in carrying out the objects and powers conferred upon it by the Constitution (pp. 49-50).

In *Van Brocklin v. State of Tennessee* (117 U. S., 151) Mr. Justice Gray, speaking for the court, said:

The liability of the property of the Pacific railroad companies to State taxation has been upheld on the distinction \* \* \* that, although the railroad corporations were agents of the United States, the property taxed was not the property of the United States, and a State might tax the property of the agents, provided it did not tax the means employed by the National Government.

And he there quoted with approval the following from the dissenting opinion of Mr. Justice Bradley in the *Peniston* case:

The States can not tax the powers, the operations, or the property of the United States, nor the means which it employs to carry its powers into execution.

In *California v. Central Pacific Railroad Co.* (127 U. S., 1) the question of taxation by the State of California of the franchise of the Central Pacific Railroad Co. came before the Supreme Court in this case, and the court, speaking by Mr. Justice Bradley, unani-

mously held that such franchise was not subject to taxation by the State. In the opinion the following language is used:

It seems very clear that the State of California can neither take them (the franchises held by the company) away, nor destroy nor abridge them, nor cripple them by onerous burdens. Can it tax them? It may undoubtedly tax outside visible property of the company situated within the State. That is a different thing. But may it tax the franchises which are the grant of the United States? In our judgment it can not. What is a franchise? \* \* \*

Generalized, and divested of the special form which it assumes under a monarchical government based on feudal traditions, a franchise is a right, privilege, or power of public concern, which ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration, either by the Government directly or by public agents, acting under such conditions and regulations as the Government may impose in the public interest and for the public security. Such rights and powers must exist under every form of society. They are always educed by the laws and customs of the community. Under our system their existence and disposal are under the control of the legislative department of the Government, and they can not be assumed or exercised without legislative authority. No private person can establish a public highway, or a public ferry, or a railroad, or charge tolls for the use of the same, without authority from the legislature, direct or derived. These are franchises. \* \* \* No persons can make themselves a body corporate and politic without legislative authority. Corporate capacity is a franchise. \* \* \*

In view of this description of the nature of a franchise, how can it be possible that a franchise granted by Congress can be subject to taxation by a State without the consent of Congress? Taxation is a burden, and may be laid so heavily as to destroy the thing taxed, or render it valueless. As Chief Justice Marshall said in *McCulloch v. Maryland*, "the power to tax involves the power to destroy." Recollecting the fundamental principle that the Constitution, laws, and treaties of the United States are the supreme law of the land, it seems to us almost absurd to contend that a power given to a person or corporation by the United States may be subjected to taxation by a State. The power conferred emanates from and is a portion of the power of the Government that confers it. To tax it is not only derogatory to the dignity, but subversive of the powers of the Government and repugnant to its paramount sovereignty. \* \* \* It may be added that these views are not in conflict with the decisions of this court in *Thomson v. Pacific Railroad* (9 Wall., 579), and *Railroad Company v. Peniston* (18 Wall., 5). As explained in the opinion of the court in the latter case, the tax there was upon the property of the company and not upon its franchises or operations. (127 U. S., 40-41.)

*Reagan v. Mercantile Trust Co.* (154 U. S., 413).—While the language in this case is not wholly clear, it seems to indicate a belief that Congress might exempt such a railroad from State taxation. Page 416:

Similarly we think it may be said that, conceding to Congress the power to remove the corporation in all its operations from the control of the State, there is in the act creating this company nothing which indicates an intent on the part of Congress to so remove it \* \* \* It (Congress) must have known that, in the nature of things, the control of that business would be exercised by the State, and if it deemed that the interests of the nation and the discharge of the duties required on behalf of the nation from this corporation demanded exemption in all things from State control it would unquestionably have expressed such intention in language whose meaning would be clear. Its silence in this respect is satisfactory assurance that, in so far as this corporation should engage in business wholly within the State, it intended that it should be subjected to the ordinary control exercised by the State over such business.

In *Central Pacific Railroad Co. v. California* (162 U. S., 125) the court said:

It may be regarded as firmly settled that although corporations may be agents of the United States their property is not the property of the United States, but the property of the agents, and that a State may tax the property of the agents, subject to the limitation pointed out in *Railroad Company v. Peniston*, etc.

Of course, if Congress should think it necessary for the protection of the United States to declare such property exempted, that would present a different question.

*Van Allen v. The Assessors* (3 Wall., 70 U. S., p. 573).—The court in this case considered the act of June 3, 1864, "to provide a national currency," etc., which subjected the shares of bank associations in the hands of shareholders to taxation by the States under certain limitations. It also considered the act of March 9, 1865, of the legislature of New York, which taxed such shares but did not tax them by the same rule as the shares of State banks, and held this statute unwarranted by the act of Congress and void. The court said (p. 591):

That Congress may constitutionally organize or constitute agencies for carrying into effect the national powers granted by the Constitution; that those agencies may be organized by the voluntary association of individuals, sanctioned by Congress; that Congress may give to such agencies so organized corporate unity, permanence, and efficiency; and that such agencies in their being, capital, franchises, and operations are not subject to the taxing power of the States, have ever been regarded since those decisions as settled doctrines of this court.

It will be perceived in this case that Congress laid down the rule under which a State tax could be levied upon the capital invested in a national incorporation, and, as the rule laid down by Congress was violated by the State, the tax of the State was held to be invalid.

From the foregoing authorities it seems clear—

First. That Congress, under the power to regulate interstate commerce, can create corporations for the purpose of engaging in such commerce.

Second. That a State can not tax the franchises of such corporations, nor can it interfere with the operations of a corporation chartered by the United States for such purposes, or hinder, impede, or burden such corporations in carrying out such purposes.

Third. That, while the State may tax the tangible property of the corporation within its territorial limits, in the absence of any restriction upon the taxing power of the State contained in the charter of the corporation, nevertheless Congress may, in terms, expressly provide against such State taxation by a declaration that all the property of the corporation necessary for the carrying out of the purposes for which it was incorporated shall not be subject to State taxation, or it can prescribe the rule for State taxation. In other words, Congress itself can declare what shall be regarded as the instrumentalities of government, can define such instrumentalities in the charter itself, and upon such instrumentalities the States can not levy any tax if Congress forbids.

#### TAXATION ACCORDING TO DENSITY OF TRAFFIC.

In laying down such a rule it may be said that sufficient regard would not be had to the density of traffic; that in some States traffic would be very much more dense than in others; that it would be very unfair to allow to States in which the traffic is less dense the same tax per mile as to States in which the traffic is greater. This objection can be met by providing that each mile of second track should be estimated as one-half mile of main track, and that each mile of third, fourth, or fifth track should be estimated as a quarter mile

of main track, and thus the States whose density of traffic is demonstrated by the existence of second, third, and fourth tracks would receive a larger amount proportionately per mile of main track than the States in which the traffic is not so dense and in which such extra trackage does not exist.

#### A CERTAIN FACTOR IN RATE FIXING.

The advantage of this method of taxation would be also that the Interstate Commerce Commission would have another factor in their determination of rates which would be entirely certain. As it is, assuming that these railroads are entitled to a fair return upon a fair valuation, that return can only be ascertained after computing the gross receipts, then deducting from such receipts the expenses of operation and maintenance, and finally deducting the taxes and fixed charges. The balance would be the income which would be applied as a return upon the value of the property.

It is, therefore, of the highest importance that the taxes themselves should be fixed and certain. If they vary, the whole calculation of the Interstate Commerce Commission must vary, for the rates must be adjusted in such a way as to yield to the corporation operating expenses, maintenance, and taxes, and a fair return upon the valuation.

#### ACCIDENT AND INSURANCE FUND.

A national incorporation act should also provide for an insurance fund. We all know that in every State in the Union the employees of railroads are pushing legislation fixing the liability of corporations for injuries to employees, even though caused by the negligence of fellow employees. There is constant warfare between the railroads and their employees upon this question, and it is another fruitful source of the activity of railroads in politics. In order to protect themselves they are omnipresent in all the legislatures of the country upon this subject. It seems to me that we should frankly recognize such liability as a charge upon the transportation of the country. There should be a fund created to aid those employees who are disqualified for active service through accident or old age by providing that the national corporations should pay into the National Treasury 1 per cent of their gross receipts, which, under the present system, would amount to about \$20,000,000 annually.

This fund should be invested by the Interstate Commerce Commission in interest-bearing securities, and the Interstate Commerce Commission should frame rules and regulations with regard to its payment to the disqualified employees. This \$20,000,000 would not be taken from the profits of the stockholders, but would be imposed upon the commerce of the country as part of the operating expenses of the companies. In this way we would do much to relieve the present hostility between the corporations and their employees regarding this matter, and we would do much to protect the men who are engaged in this public service of an extra hazardous character.

## NATIONAL OWNERSHIP OF RAILROADS.

Mr. President, I have already referred to the fact that this bill is likely to burden the Interstate Commerce Commission to such an extent that it will prove inert and inactive and incapable of accomplishing its purpose. If we establish a rule that will work automatically, tending toward a gradual reduction of rates, there will be no difficulty; but if we do not, I believe there will be a steady and increasing tendency toward nationalization of all the railroads of the country.

The proposition is a very simple one. The existing railroads are now, for the most part, embraced in about 10 systems, each of them controlled by a corporation organized under the laws of a single State. These corporations have outstanding about \$6,000,000,000 of bonds and \$6,000,000,000 of stock. It is unnecessary to consider the bonds, for they can remain as a charge upon the property when the United States Government seeks to acquire the railroads, and it can gradually substitute for the existing bonds, bearing interest at the rate of 4, 4½, or 5 per cent, bonds bearing interest at the rate of 3 per cent, thus making a gradual reduction of about \$100 000,000 annually in interest charges. It is not necessary for the Government to condemn the physical property of the corporations. All that it needs is the interest of the shareholders.

This was done recently in the case of the Panama Railroad, when a bill passed the Senate, with the approval, I believe, of all the lawyers, giving the United States power to condemn shares of stock in the Panama Railroad that were outstanding. We could exercise that same power now with our railroads, and all that we would have to provide for would be the market value of all the railroad stocks, whose par value is about \$6,000,000,000. Such market value is, I believe, about \$5,000,000,000.

## NATIONAL OWNERSHIP EASILY FINANCED.

The statement for 1904 shows that the net income of all the railroads of the country, after paying operating expenses, taxes, maintenance, and interest upon debt, amounted to \$278,000,000. Assuming that we had to pay \$5,000,000,000 for all the stocks outstanding, we could issue national bonds at 3 per cent therefor, and the annual interest charge would not be more than \$150,000,000. We would have, according to this statement, an excess of \$128 000,000 annually, which could be applied to a sinking fund or to extensions. The Nation could also gradually retire the existing mortgage bonds bearing interest at about 4½ per cent with 3 per cent bonds, and thus making a saving in interest of \$100,000,000 more, and thus we would in time accomplish an annual saving of \$228,000,000, which would construct at least seven or eight thousand miles of railroad annually to keep pace with all the requirements for new construction in the future. Or if new capital should be applied to that, the \$228,000,000 put into a sinking fund would soon retire every dollar of indebtedness created by the purchase of these railroads. Or we could enter upon national ownership in a very limited way.

## A NATIONAL TRANSCONTINENTAL LINE.

We could acquire simply one trunk line from the Atlantic to the Pacific by acquiring the Baltimore & Ohio, running from New York, Philadelphia, and Baltimore to Chicago, and the Atchison system, running from Chicago to San Diego, Los Angeles, and San Francisco. We could condemn their stock for about \$450,000,000, leaving the roads subject to a bond issue of about \$500,000,000. The income of those properties would take care of the interest charges and leave a surplus that could be applied to a sinking fund or to new construction. Branch lines of railway could be built from this great central line or the numerous railroads in the country that are not embraced in the great systems could connect and cooperate with it. I suggest this line because less money would be required in financing it than in any other line.

## INCREASE IN INCOME.

That the income of these railroads is bound to increase largely under existing conditions is demonstrated by a comparison of their earnings for 1904 and the earnings for 1897. The gross earnings for 1904 were \$1,975,000,000; for 1897 (seven years previous) they were \$1,122,000,000, an increase in seven years of about 70 per cent. It is altogether probable that within the next 10 years the present gross earnings of the railroads now aggregating about \$2,000,000,000 will be increased to \$4,000,000,000.

A more favorable showing is made regarding the net income. In 1904, after deducting all interest charges, operating expenses, maintenance, and taxes, the net income was \$278,000,000, while in 1897 it was only \$81,000,000. So their net income has been increased within a period of seven years over 300 per cent.

The Nation having acquired the stock of these railroads, their operation could be continued under their present managers with their present employees. The roads could continue to pay their present taxes to the States, so that no readjustment of revenues would be necessary, and the members of the Interstate Commerce Commission could constitute the directors of these corporations and gradually work out a system of national administration, just as the Panama Commissioners are now acting as the directors of the Panama Railroad Co.

If the United States is ever to enter upon the purchase and nationalization of these roads, it could never act at a more favorable time than now, nor with more justice to the stockholders and bondholders of these corporations, for their stocks have within seven years increased from 25 to 100 per cent in value.

## NATIONAL CONSTRUCTION OF RAILROADS.

But if the United States should be unwilling to condemn existing properties, which, on the average, are capitalized at about \$65,000 per mile, it could easily enter upon the work of national construction without interfering seriously with the operations of any of the existing systems. I imagine it would not be our wish to imperil the investments of the stock or bondholders of existing corporations,

and that many would not look with favor upon a policy which would put the Government in the attitude of a competitor with private railroads.

But we must remember that new construction is going on at the rate of about 5,000 miles per annum. There is no reason why the United States should not take up new construction—the construction of the future. The railroads are now engaging in it. The Gould system is now being extended into a transcontinental line. It will be absolutely necessary in the near future to duplicate and perhaps triplicate the tracks of some of the existing roads in order to meet the demands of business. Why, then, should not the United States construct one road from ocean to ocean and operate it as an experiment in national ownership?

Three thousand miles of railroad would not cost more than \$35,000 per mile. One hundred million dollars would construct such a railroad. The Geological Survey, with its great force of topographers and civil, railroad, hydraulic, and construction engineers, now employed in the Reclamation Service, could easily undertake the work, and thus the Nation would have an opportunity of contrasting Government construction and operation with that of private corporations.

The Nation could in this way, while leaving the existing railroads in the enjoyment of their present business, simply take up the railroad construction of the future. The capitalization of such roads would be at the rate of \$35,000 a mile instead of the existing capitalization of about \$65,000 a mile.

The financial difficulty therefore is not a great one. If we take hold of all the roads or a chain of roads, like the Baltimore & Ohio and the Atchison system, the net income would pay all the interest charges and leave a surplus for a sinking fund or extensions.

#### COMPLEXITY OF EXISTING CONDITIONS.

I imagine that the country will respond to such an appeal unless we relieve the complexity of the existing conditions. What is that complexity? We have 2,000 railroad corporations in this country, combined, for the most part, into eight or ten great systems. The complexity of the situation is beyond parallel. It is almost impossible to get at the facts regarding these great systems.

Look over the interstate commerce reports and you will find the Pennsylvania Railroad operating a system. Under its name, as subsidiary lines, will be 80 or 90 different roads, and you will find at the side after the name of each road a note to the effect that this line is a subsidiary line and that line is an operating line; in this line the Pennsylvania Railroad owns all the stock, in that line the Pennsylvania Railroad owns a part of the stock; this road is leased; with another road it has traffic arrangements, etc. Thus you find the utmost complexity as to title and ownership and the holding of these various systems, all arising out of the fact that, while combination is desirable, the laws, whether National or State, have not provided suitable machinery for its accomplishment.

This complexity is, and will continue to be, a fruitful source of corruption and fraud. Then we find that there is some understanding between the New York Central, the Pennsylvania Railroad, the Baltimore & Ohio, the Norfolk & Western, and the Chesapeake &

Ohio, all of them trunk lines, all of them occupying the territory of densest traffic, all of them national in their operations, for they embrace not only the traffic of the States through which they operate but the traffic of the entire Union. The traffic of the Pacific coast, the traffic of the Southern States, the traffic of the Middle States, all go over these trunk lines, and yet it is impossible for a national commission to understand what is the relation of these various roads toward each other.

It finds each of them operating numerous subsidiary companies, all bound to the parent company by the most complicated arrangements. Some of these arrangements take the shape of rentals. How can they tell whether a fair rental is made in these cases? Suppose the directors of the New York Central are interested in a railroad which is intended to be taken into the New York Central system, and they do it through the medium of a 999 year lease. I ask whether they are likely to be very rigid with themselves in fixing the terms of that lease? Whether, if it is a question between a rental that will yield 4 per cent and one that will yield 8 per cent, they will not be likely to determine in favor of the latter, and whether in that case the larger rental will not, by the contract of parties interested upon both sides, dealing with each other, be fastened upon the entire commerce of the country?

#### INTERCORPORATE HOLDINGS.

Then these railroads have their intercorporate holdings. The Baltimore & Ohio owns \$30,000,000 of the stock of the Reading Co., a company which owns the stock of the Philadelphia & Reading Co. and also owns extensive coal mines. We have also the Lake Shore & Michigan Southern, which is one of the subsidiary roads of the New York Central, owning an equal amount, I believe, about \$30,000,000, in the stock of the Reading Co. Then we have the Pennsylvania owning a large amount of Baltimore & Ohio stock, and we find some of the subsidiary roads of the New York Central owning stock in the Chesapeake & Ohio and the Norfolk & Western, so they are all interlinked with each other. These four railroad systems constitute the trunk lines of the country over which almost all the commerce of the country goes, and yet they are organized under the laws of particular States in whose government the people of the Nation generally have no share.

I ask whether it is an essential doctrine of State rights that the State of New York is to create the machine that is to do the business for the Nation, or that the State of Pennsylvania or the State of New Jersey should create the machine that is to do the Nation's business? Would it not be very much wiser to provide for a national incorporation act, under which these great consolidations can be accomplished and under which they can be supervised and controlled. The intercorporate holdings of these railroads to which I have alluded aggregate nearly \$3,000,000,000—nearly two billion in stock and nearly one billion in bonds—and of these intercorporate holdings, three hundred millions are holdings in corporations that are not transporting corporations, not railroad companies, but coal companies, steel companies, companies engaged in production.

The States furnish the machinery by which production and transportation can be linked together. I imagine nothing can be more apparent than the fact that if you give certain men control of the transportation of the country and also give them control of the production, through these great trusts and combinations, they will in time absorb all the wealth in the country, and yet this is permitted under State laws, while the Nation, whose commerce is three-fourths of all the commerce in the country, sits idly by and allows the States to frame the charters under which these great masters of transportation and of production can absorb the productive wealth of the country.

#### ABSORPTION OF STATE RAILROADS BY NATIONAL CORPORATIONS.

Mr. BACON. Will the Senator permit me to make an inquiry of him?

Mr. NEWLANDS. Certainly.

Mr. BACON. The Senator is speaking of a condition now existing. We have in this country some 230,000 miles of railway; I believe, almost all of which is the property of companies which have already been chartered by the States——

Mr. NEWLANDS. Yes.

Mr. BACON. And which to-day exist as corporations by State authority. I should like to know of the Senator, if he could secure the necessary consent of Congress to carry out his scheme, in what way could the charters of these hundreds, and almost thousands, of corporations granted by the States be taken away from them—nullified, in other words—and national charters substituted therefor, except by the consent of the States themselves, unless you are going to work a much more far-reaching revolution in the centralization of power than we have ever had suggested by the most extreme advocate of central power? In what way would the Senator proceed practically to consummate the purpose which he now suggests, and that is to bring under Federal control all of these hundreds, if not thousands, of corporations now existing under State law, with corporate rights secured under State laws, and all these vested interests built up under State law? What would be the practical proceeding which the Senator would recommend to enable him to carry out his purpose, even if he had the consent of Congress to do it?

Mr. NEWLANDS. I will say to the Senator that in the first place I would not attempt to do it without the consent of the States. But I assume that the States would yield their assent just as readily to the operation of railroads incorporated by the Nation as to the operation of railroads incorporated by sister States.

Mr. BACON. I should like to suggest to the Senator——

Mr. NEWLANDS. Take the Southern States, for instance——

Mr. BACON. I should like to suggest to the Senator the very remarkable difference there is between the two. When a corporation is organized by a sister State it does business in another State simply by the comity of that other State and by the consent of that other State.

Mr. NEWLANDS. Yes.

Mr. BACON. Whereas if the scheme the Senator from Nevada suggests could be inaugurated it would not be a matter of consent on the

part of the State. If we have the power to do what he contends for, it would be a matter of obligation and compulsion on the part of the State, whether it desired it or not. That is a very different thing from the State being willing to consent to a railroad operating under a charter granted by some other State, the exercise of whose corporate powers in that State still continue to be within the control of that State.

Mr. NEWLANDS. I will say to the Senator I have very much modified my proposition since I first asserted it, in order to meet the objections of those who fear that it might involve usurpation of State sovereignty. I have now framed some provisions, which the Senator will find in the appendix to my views upon this bill when reported from the committee, in which I take up the question to which he has referred.

I will state that so far as new construction is concerned, there is no doubt about the power of the National Government to organize national corporations for the purpose of conducting an interstate road. If such a road were constructed, the National Government could lay down the scheme of taxation for that road.

Mr. KEAN. Without the consent of the State?

Mr. NEWLANDS. Without the consent of the State; absolutely.

Mr. KEAN. Take land and do everything necessary?

Mr. NEWLANDS. Certainly; under the power of eminent domain.

Mr. BACON. The Senator will pardon the inquiry, as I ask for information simply. The Senator is contending for a system of national taxation to the exclusion of State taxation. Does the Senator mean now to assert the doctrine that under the power of interstate commerce the Federal Government can charter a railroad through a State and deny to the State the right to tax that railroad, and take to itself the exclusive power to tax that railroad?

Mr. NEWLANDS. I do. I would not deem it wise, however, to exercise that power.

Mr. BACON. I understand the Senator did advocate the exercise of that power, because the great evil that I understand him to be combating is the evil which grows out of State taxation. The Senator wishes to have uniform taxation, which, he says, can be accomplished only by the National Government.

Mr. NEWLANDS. But I would not exercise that power by exempting the property from State taxation. I would exercise it by providing the rule and the method of taxation.

Mr. BACON. By which the State would levy the tax?

Mr. NEWLANDS. By which the State would levy the tax.

Mr. BACON. But that would imply, of course, the power to deny to the State the power to tax it.

Mr. NEWLANDS. Yes; I contend for that.

Mr. BACON. The Senator has given very much more thought to this subject than I have, and I should like to inquire of him whether his statement that in his opinion it is within the power of the National Government to authorize the construction of railroad through a State and to deny to the State the right to tax any of that property is based simply upon his own reflection or upon the statement or ruling of any court?

Mr. NEWLANDS. Upon both, I will say to the Senator. I claim, in the first place, that the National Government can itself construct a

railroad—an interstate railroad. It can, if it chooses, construct a railroad from the Atlantic to the Pacific Ocean, just as to-day it is constructing the Panama Canal. I claim, further, that that road—a Government road—after it is constructed, would be exempt from taxation by the State.

Mr. BACON. The Senator is now speaking of the construction of a railroad by the Government and not of the granting of a franchise to a company.

Mr. NEWLANDS. Yes; but I am going to follow it up.

Mr. BACON. The Senator is now speaking of the appropriation by the Government to its own use of property in the way of right of way, etc., and upon that constructing a railway, the title of which shall be in the Government and the ownership of which shall be in the Government.

Mr. NEWLANDS. Yes.

Mr. BACON. That would be very limited in its operation, necessarily, if the Senator is speaking of those things which are practical. As I understand the contention of the Senator, it is that there is such a great evil growing out of the multiplicity of railroads, with different charters, different powers, different burdens resting upon them, of their own indebtedness, and of differing systems of taxation and rates of taxation, that it is of the highest importance that all this vast system shall be unified in such a way that there shall be uniformity of burden upon the railroad companies, in the way of taxation particularly. When the Senator suggests the construction of a road by the Government, of course, he has to engraft that upon a system, which already has 230,000 miles of railway.

So in dealing with the question practically, for the purpose of meeting the evil which the Senator contends exists, it seems to me the matter to which our attention should be directed is the question how shall this vast system be unified, and not how it would be practicable to build one railroad. While I do not agree with the Senator on his contention in regard to that proposition, I do not think he meets the question, even if the correctness of his proposition were conceded.

Mr. NEWLANDS. I will say to the Senator that I was simply giving him the process of reasoning by which I arrived at the conclusion that a railroad incorporated by the National Government as an instrumentality for interstate commerce could be exempted by the National Government from taxation, and so I started by assuming that if the National Government, in the exercise of its power over interstate commerce, should conclude to build a road from the Atlantic to the Pacific Ocean, with all its branches, etc., it would exempt that railroad from State taxation.

Then, I assume next that if the National Government, instead of building the railroad itself, concludes to put the construction in charge of an agent, a corporation which it has itself created, it can also stamp that road as a national instrumentality and exempt it by express enactment from State taxation; and that if it can do that it can prescribe the rule by which the State can tax that particular property. My reasoning thus far extends only to the case of a Government-owned railroad or a Government-incorporated railroad. Now, let us take up—

Mr. HEYBURN. Mr. President—

The VICE PRESIDENT. Does the Senator from Nevada yield to the Senator from Idaho?

Mr. NEWLANDS. I should like to get through with my reply to the Senator from Georgia.

CAN CONGRESS RELIEVE THE RAILROADS FROM STATE TAXATION?

Mr. HEYBURN. Before the Senator leaves that question I should like to ask whether, in his judgment it is competent for Congress to relieve this property from taxation in the States?

Mr. NEWLANDS. I think so.

Mr. HEYBURN. Then I should like to make this suggestion to the Senator: In some counties in my State the railroads pay from 60 to 70 per cent of the taxes that go to the maintenance of the local government. I suppose there are such instances in Nevada. Would the Senator regard as reasonable any law which would exempt those railroads from contributing to the expenses of the government that affords them protection?

Mr. NEWLANDS. I would not, and I do not propose to exempt them.

Mr. HEYBURN. I think there are counties in the Senator's State where the railroads pay as much as 80 per cent of the expense of maintaining local government. If you are going to exempt the railroads from taxation within the States, where is the substitute to be found for maintaining the local government—schools, roads, etc.?

Mr. NEWLANDS. I will say to the Senator that I do not propose to exempt the railroads from State taxation. On the contrary, I propose to subject them to State taxation.

Mr. HEYBURN. I misunderstood the Senator.

Mr. NEWLANDS. I propose that the National Government shall fix the rule by which the roads shall be taxed, providing they are railroads under national incorporation, created as national instrumentalities for the purpose of carrying out a national power.

Mr. HEYBURN. I should like to ask the Senator whether he thinks Congress can do that?

Mr. NEWLANDS. I think so.

Mr. HEYBURN. Can project a railroad into a State, which railroad enjoys the protection of State laws, and the State be able to tax the railroad only under the rule established by the Government, without any State control over it at all?

Mr. NEWLANDS. I do not propose that the National Government shall tax the railroads at all, but that the National Government shall fix the rule by which the States shall tax them.

Mr. HEYBURN. What is the difference between fixing the rule under which the railroads shall be taxed and taxing them, because if the Government could fix the rule it could limit it without regard to the necessities of the State? It seems to me a difficulty would arise there.

Mr. NEWLANDS. So far as the power is concerned—we have that already illustrated in the action of the National Government with reference to national banks. The National Government fixes the rule by which national banks shall be taxed.

Mr. HEYBURN. I suggest that is in the nature of tangible property—

Mr. NEWLANDS. No.

Mr. HEYBURN. And the other is a class of property that taxes possession of the soil, occupies a part of the territory.

Mr. NEWLANDS. The National Government fixes the rule by which the capital stock of national banks may be taxed in the States.

Mr. HEYBURN. That is tangible property.

Mr. NEWLANDS. It is true it does not relieve the real estate of the banks from taxation, but it does fix the rule that shall apply to the capital stock of the bank.

Mr. HEYBURN. But not to the building.

Mr. NEWLANDS. It does so upon the ground that the national bank is a national instrumentality, and that the State will not be permitted to put a burden upon that national instrumentality which may destroy it.

Mr. HEYBURN. I would ask the Senator—

Mr. NEWLANDS. If the Senator will permit me, in this case the national instrumentality is the road itself—the rails and the equipment and the appurtenances—that is, the property, the instrumentality by which transportation is conducted and through which interstate commerce is conducted, and the reasoning, therefore, applies to that instrumentality.

#### M'CULLOCH V. MARYLAND.

In the case of *McCulloch v. Maryland*, with which the Senator is familiar, the Supreme Court held that the State of Maryland could not tax the notes of a national bank, and it held it could not upon the ground that the bank was a national instrumentality, and the sovereignty of the Nation could not permit the sovereignty of the State to put a burden upon a national instrumentality which might destroy it. It is true that in that case the court said that the exemption would not apply to the real property upon which the bank was located.

Mr. HEYBURN. I was going to ask that question.

Mr. NEWLANDS. But recollect in that case the property of the bank was not exempted by statute at all—none of it—and the Supreme Court held in that case that by implication the property to which I have referred was exempt from taxation because it was necessary in the exercise of the powers of the National Government. The ownership of the bank building is not. They could conduct their bank in a leased building. But, so far as all of the instrumentality necessary to exercise the power, they are exempt.

In this particular case the railroad is the thing. It is the instrumentality itself—the railroad, its appurtenances, and its equipment—and I urge that if that railroad is in the ownership of the Government the Government can exempt it from taxation, and if it is in the ownership of a corporation created by the Government, it can exempt it. I admit, as to the law of the case, that that matter has not been finally determined by the Supreme Court, but I have already shown that in the *Peniston* case the court stood four to four upon it, and the only reason why the judgment was rendered against the exemption in that case was that one of the four judges, who held that the power to exempt could apply to the railroad, claimed that the exemption had not been declared in the statute, and that unless it was declared in the statute it was clearly not the intention of Congress that the property should be exempt. So the case stands four to four in that decision.

But upon the reasoning of the case, the logic of the case, if a national railroad, incorporated by the United States Government, was

constructed by an agent of the United States Government, and if it is declared to be a national instrumentality, and declared by the National Government to be exempt from taxation, then under the case of *McCulloch v. Maryland*, and by reasoning and analogy, it is clear the exemption will be sustained.

As to the policy of exempting it, that is another thing. All I insist upon is a fair rule of taxation. I do not propose to diminish the existing taxes an iota, but I want to propose a rule which will make these taxes mathematically precise, in order in the future to keep the railroads out of politics upon this question, and to aid in the determination of rates by securing a definite factor in the calculation of fixed charges.

Mr. HEYBURN. I should like to ask the Senator from Nevada a question.

The VICE PRESIDENT. Does the Senator from Nevada yield to the Senator from Idaho?

Mr. NEWLANDS. Certainly.

Mr. HEYBURN. I should like to ask the Senator whether, in his judgment, if the railroad was the property of the United States, it could be taxed at all by a State? And I will say, in connection with that question, that the strongest argument against Government ownership of railroads is that the States could not tax the property of the Government of the United States, and would therefore be deprived of the support that they naturally should have in the way of taxation.

#### MERGER.

Mr. NEWLANDS. I know that is urged as a reason. In reply to the Senator from Georgia, who asked me how we would, under a national incorporation act, secure the merger of these State corporations into a national corporation, I will say, in the first place, that I do not propose in my bill that that shall be done without the consent of the States. But if the Senator will look at the legislation of some of the States, particularly the Southern States, he will find that the States have not been loath to allow a foreign corporation to enter their borders and to construct and operate railways. Take the ten Southern States south of Pennsylvania and of Ohio.

Almost the whole of the transportation facilities of those States to-day are under the control of two great systems. One is the Southern Railway system and the other the Atlantic Coast system. Each of these systems operates about 10,000 miles. The Southern Railway Company is incorporated under the laws of Virginia. The Atlantic Coast Railroad Company was originally incorporated under the laws of Virginia, I believe, but its stock has now passed into the hands of the Atlantic Coast Company, which is incorporated under the laws of Connecticut. So we find that one of the systems of railway traversing the entire South is incorporated under the laws of Virginia, and the other practically incorporated under the laws of Connecticut.

How is it that those railroad companies operate in those States? With the consent of the States, expressed in legislation. And the Senator will find that in one or more of the States in the South they have laws now upon the statute books which permit merger with any

connecting railroad, whether incorporated under the laws of another State or under the laws of the United States. I imagine they will have no more objection to merger with a corporation organized under the laws of the United States than they will have to a merger with a corporation organized under the laws of a State.

Mr. BACON. Mr. President—

Mr. NEWLANDS. Particularly if, as in this case, the law incorporating the national corporation absolutely disclaims any intention of interfering with the police power of the State and provides that it shall only acquire an existing railroad in any State with the consent of that State.

The VICE PRESIDENT. Does the Senator from Nevada yield to the Senator from Georgia?

#### DUAL SOVEREIGNTY.

Mr. NEWLANDS. If the Senator will just let me close this thought. Here are two sovereigns, one the great national sovereign, exercising sovereignty under the granted powers over the territory occupied by all the States of the Union, the other sovereign each of the 45 different States. The State has control over State commerce. The Nation has control over interstate commerce. The same machine must do the business of both. Now, if the State can create the machine that is to do interstate commerce, the Nation can create the machine that is to do State commerce.

Mr. BACON. Mr. President—

Mr. NEWLANDS. If the Senator will permit me, the States can not authorize corporations to do interstate commerce without the approval of the Nation, and the Nation can not authorize corporations to do State commerce without the approval of the States; but I imagine that consent would be forthcoming in both instances. Now I yield to the Senator from Georgia.

Mr. BACON. The reason why I sought to interrupt the Senator was because he was passing away from the point on which I wished to reply to him. I want to say, however, that I have no disposition to unduly interrupt the Senator, and my only purpose in the first interruption was to get his views as to how he proposes practically to accomplish that which he argues so effectively theoretically.

Mr. NEWLANDS. I am very glad to yield to the Senator.

#### RAILROAD SYSTEMS IN THE SOUTHERN STATES.

Mr. BACON. The Senator, though, in speaking of the question of probably securing the consent of the States mentions the fact that in the Southern States, using them as an illustration, most of the railroads are owned by two or three systems, and that being operated successfully in States making no special objection to that fact they would equally consent that there should be systems operated under Federal charter, the systems now being operated there having, as they do, charters of other States.

I wish to make a statement to the Senator, and I do not propose to pursue the discussion further or to interrupt him in the regular course of his remarks. There is a vast difference between the two.

The purpose of the Senator, if accomplished by Federal incorporation, would be entirely different in its operation from that which is now accomplished by railroads operated as they are under charters from other States.

The purpose of the Senator is to take away from the States the right to assess and collect taxes, and if his scheme could be carried out under national incorporation the large systems of railroads operated under Federal charters would have as their chief characteristic or feature the fact that their taxes were assessed and perhaps levied by the Federal Government; if not levied, certainly assessed. In other words, the State would entirely lose the right of assessing taxes and be remitted under the Senator's scheme purely to the work of collection, whereas as it now exists, while it is true that the railroads are chartered in a large measure (it is not altogether so in my State, by any means) by States other than those through which they run, nevertheless in all those cases and in all those States the power of assessing and levying taxes is as perfectly preserved by the State as if the road was chartered within that State and operated solely by an authority or franchise received from it.

As I said, I do not desire to break up the Senator's speech with a colloquy, but I really interrupted him for the purpose of getting his view, if the Senator's theory is a correct theory, and if Congress could be gotten to consent to it and to attempt to put it in execution, in what way would the Senator seek to bring under his general control the 230,000 miles of railroad now being held under charters granted by States and not by the Federal Government. The Senator has already expressed his view as to how that was to be done, and I simply repeat it for the purpose of disclaiming any purpose to enter into any general discussion with him on the subject.

Mr. NEWLANDS. Mr. President, I am glad to have the Senator put me any inquiry that he sees fit, and I am only too glad to answer.

I will state to the Senator that it is not absolutely essential that a national incorporation act should provide for a scheme of taxation. I assume that Congress could not, in framing a national incorporation act, provide a scheme of taxation unless it presented obvious advantages—advantages which the representatives of every State in the Union would see.

#### ADVANTAGES OF UNIFORM TAXATION.

Now, those advantages are that if we have a fixed tax, mathematically ascertained, it will yield as much and more than the States now get. It also takes the railroads out of politics as to taxation, and I regard that as very desirable. Second, it results in a certain factor for the regulating of commerce, both National and State, because then taxes can be definitely and mathematically ascertained as one of the fixed charges of the company, whereas if they are left in the elastic form to which I have already alluded, ranging possibly all the way from the present tax of \$56,000,000 in the aggregate to \$150,000,000, and involving possibly in addition a tax of equal amount upon the stockholders and bondholders, all certainty regarding taxes as a factor in the regulation of railroad rates will be lost.

I would expect, of course, in the consideration of such legislation that the Members from the different States represented in Congress would not permit any provision to go in regarding taxation unless they felt it was a beneficial provision—beneficial to the States themselves and beneficial to the entire Nation. It is not essential, however, to national incorporation; in fact, it is rather extraneous to it. The main purpose to be accomplished by national incorporation is the control over capital and also the control over the return upon capital.

COMITY OF THE STATES TO THE NATION.

The Senator seems to doubt that the States would pursue the same rule of comity toward a national corporation that they follow with reference to a corporation organized under the laws of a sister State. I admit that at the start there may be a feeling that here is the great national sovereign proposing to dominate the transportation in a particular State. But then I would expect the people of the State and their representatives to reflect upon the utter inadequacy of existing State law to shape a machine that can do this work properly.

Mr. BACON. If the Senator will pardon me there, I will try not to interrupt him again.

Mr. NEWLANDS. Certainly.

Mr. BACON. I understand that while it would be the Senator's plan to secure the voluntary action and consent of the State, nevertheless he does contend that in the absence of such consent it would be within the power of the Federal Government without that consent to convert all these charters into Federal charters.

Mr. NEWLANDS. No; I do not contend that.

Mr. BACON. Does not the Senator recognize that of all the schemes—and I use the word "scheme" not in any disparaging sense—of all the plans that have been suggested, short possibly of the Government ownership of the 230,000 miles of railroad in this country, there has never been a scheme which would so certainly result in the far-reaching and fast-binding of the centralizing power and authority of the General Government as would this scheme.

Mr. NEWLANDS. I think not. I do not think it would centralize power in the National Government any more than the present system centralizes power in the hands of outside States. We must locate power somewhere, and under the existing system of combination and consolidation the great corporation which controls the transportation of 10 or 15 States, and through them the commerce of all the Union passing over those roads, is centralized in a particular State, like the State of Virginia, or the State of New Jersey, or the State of New York. I imagine that if this transportation system is to be under the control of a foreign corporation the States affected would rather have the control in the Federal Government, in whose legislation every State has a share, than in a State in which the people of no other State have any share.

In examining the statutes of some of the States I find they expressly provide for the merger of railroads organized under the laws of that State with railroads organized under the laws of other States or of the United States. So there is the evidence right upon the statute books that there is no objection to accepting the National Government as the creator of the corporation that is to merge these

great systems. Let me call the Senator's attention to the loose legislation that has prevailed in States upon this matter.

Mr. BACON. If the Senator will pardon me, before he goes on to that, just as a mere suggestion, I will revert to the fact that not only the State's control over the railroads thus merged, of which he speaks, is in the right of assessing and collecting taxes, but the right to control in every particular—every matter of police, every matter of taxation, every matter of the regulation of rates is still within the power of the States. Under the Senator's system the matter of police and the matter of regulation and the matter of the regulation of rates would be surrendered to the General Government, as well as the matter of assessing taxes.

Mr. NEWLANDS. Let me read to the Senator the section which I have prepared upon that subject. It is headed :

#### STATE POLICE AND STATE RATES.

SEC. 18. Nothing herein contained shall be construed as interfering with the police laws of any State regarding railroads incorporated under this act and operating in such States, nor shall anything herein contained be construed as affecting the right and power of each State to regulate purely State commerce on railroads organized under this act. But the Interstate Commerce Commission may hold conferences from time to time with the regulating power of any State with a view to such harmonious adjustment and regulation of State commerce and interstate commerce as will protect the public against abuses or extortion, and the railroads against inadequate returns upon their investment, and promote the efficiency of such corporations as common carriers.

Mr. BACON. The Senator must necessarily recognize the fact that the success of his scheme would involve the permanent surrender by the States thereafter to control any of those matters, and while we might pass that statute now, another statute might be passed tomorrow and the right to regulate the rates in a State, even as to the matter of rate or any question of liability for damages of any kind or under a contract of any kind or any other matter of police, taxation, or the regulation of rates, would be forever gone from the State and thereafter permanently vested solely in the United States.

If the Senator thinks that the States would voluntarily for all time surrender such rights as those, the Senator is very much more sanguine than most of us would possibly be under such circumstances. I think that so far from being ready to surrender for all time such rights as those it would create somewhat of a spirit of resistance if there was an attempt to force it upon them. The Senator, I understand, of course, does not contemplate that, but I simply speak of it as a matter of contrast.

Mr. NEWLANDS. I will state that no surrender whatever of the rights of any State is involved, in my judgment, in this proposed act. The States have absolute control over purely State commerce. The Federal Government has absolute control over interstate commerce. The same instrumentality is used for both State commerce and interstate commerce.

Now, the only question is, which sovereignty shall create that instrument? After the instrument is created nothing will interfere with the powers of the State over State commerce or with the power of the National Government over interstate commerce. The Senator might as well insist that if we permit the instrument that is to do

the interstate commerce we thereby absolutely surrender to the State all power over interstate commerce. The Senator will not contend that.

On the contrary, although Congress has permitted the State to create the instrument of interstate commerce, we are regulating that instrument by all the statutes which we have upon that subject. We have regulated the State instrument as to safety appliances, as to rebates and preferences, and we purpose now to regulate it as to rates, but only in relation to interstate commerce. So also, if a national corporation were created, that corporation, so far as interstate commerce is concerned, would be subject to the laws of each particular State; and in the absence of any provision exempting the corporation from taxation, or prescribing the rule for taxation, it would be subject to the laws of that State with reference to taxation.

Now, the Senator seems to view with apprehension the possibility that hereafter we might seek to change this law, but recollect this law can only be changed by the Representatives in this body and in the House of Representatives of the various States affected. Every one of them has a voice here and a voice in the House of Representatives, and I suggest to the Senator whether it is not better, if the instrument is to be created that is to conduct both State and interstate commerce, to have that instrument created by a sovereign in whose action the people of every State can participate rather than in the sovereignty represented by a single State, like the State of Virginia or New York, in which the people of outside States have no representation or voice whatever.

#### THE INCORPORATION OF THE SOUTHERN SYSTEMS.

Let us see what this present system fastens upon the entire Nation as a whole and upon States whose transportation is conducted by corporations organized outside of that State. The two lines to which I have referred—the Atlantic Coast line and the Southern Railway line—each controls about 10,000 miles of railways in the South. Each of those lines is composed of many different roads, organized under State laws, and each one of those was probably the result of antecedent consolidations, so that probably each of the present systems represents an aggregate of two or three hundred corporations.

Now, let us look at the law which provided for this. The Southern Railway Co. is the successor of the Richmond & Danville. The Richmond & Danville road was a small railroad company operating about 300 miles of railroad in Virginia. It got into difficulty and went into the hands of a receiver. It was purchased by certain parties, and they evidently determined to make it the nucleus of a great national system, for that is what the Southern Railway system is to-day. They applied to the Virginia Legislature, and a law was passed which provided that the purchasers of that road could organize a corporation by whatever name they chose, and that the purchasers could make the capital stock of that corporation \$350,000,000. There was no limit whatever as to bonds. The stock, however, was limited to \$350,000,000. The Senator can look over that law and he will find that there were no guards whatever attached against excessive capitalization, it being quite possible for that corporation to issue shares for a dollar a share, though the par value is \$100; and

the act provides that, whatever may be paid for the stock, the stock shall be thereafter regarded as full-paid stock.

That act gave the most ample powers, without any restriction or restraint or control of any supervising body. I can understand how it was done. The people were anxious to have the railroad system of the South built up, and they were glad to have the cooperation of any body of capitalists who would do it. So this extraordinary charter was given. As I stated, it allows this little 300-mile railroad to issue \$350,000,000 of stock. It does not provide that that stock shall be issued only for money paid or for property at its value, but under those provisions watered stock to almost any extent can be given out.

As I have stated, stock could be given for a dollar a share, and yet afterwards it would be regarded as full-paid stock at a hundred dollars a share. Unlimited power is given with reference to bonds, and then it gives the power to "lease, use, operate, consolidate with" \* \* \* "any railroad or transportation company now or hereafter incorporated by the laws of the United States."

The State of Virginia had no objection to consolidating with any corporation organized under the laws of the United States. There is the sanction now, so far as Virginia is concerned, to this very proposition—"or of any of the States thereof, or any one or more of such railroad or transportation companies."

There are liberal provisions of this kind which I shall insert in the Record. The power is given to purchase, hold, and own bonds or stocks of other corporations, and also the power to purchase and guarantee "the stocks and bonds, or either, of hotel, lighterage, wharf, elevating, and other such enterprises convenient in connection therewith or as a part thereof." The company may classify its stock as it chooses and give preferences as it chooses, and then comes the following clause:

Such new corporation may borrow money and issue bonds or other evidence of indebtedness therefor, and may secure the same from time to time by mortgage or deed of trust upon any or all of its property and franchises; and such new corporation, from time to time, may issue and sell its bonds and its capital stock at such prices and on such terms as shall be specified in said plan of organization, or as a majority in amount of the stockholders shall approve at any meeting, and may receive in payment therefor property, securities, or shares in any corporation mentioned in this act; and any stock so issued shall be deemed fully paid and free from any liability.

Now, the Atlantic Coast Line was incorporated under a similar law. Contrast that law with the State of Texas, where they will not permit consolidation with any corporation outside of the State, and where in the State itself consolidation is absolutely controlled by the regulating commission. Contrast it also with the laws of Texas, which provide that there shall be no issue of bonds or stocks except for money paid or property delivered at its actual value, and that there shall be no issue of either bonds or stocks without the approval of the railroad commission of that State. Contrast it with the laws of Massachusetts, which equally guard against overcapitalization and provide that bonds shall only be issued for money actually received or for the property delivered at its value and also provide that there shall be no issue of bonds or stocks without the approval of the railroad commission.

In both of those States you have absolute guards against overcapitalization; but these great combinations in seeking the power for combination, seek the States, by laxity of whose laws puts a premium upon consolidation and combination. They turn to States such as New Jersey and New York and Pennsylvania, whose legislation is almost altogether controlled by the railroads.

Mr. BACON. But no single one of the corporate powers given by either of those States can be exercised beyond the limits of the particular State thus granting the franchises, without the consent of the State in which it is to be exercised.

Mr. NEWLANDS. That is true.

Mr. BACON. But by the legislation which the Senator contemplates a railroad would have the right to exercise such franchise regardless of the consent of the States.

Mr. NEWLANDS. So far as interstate commerce is concerned.

Mr. BACON. Well, if they are interstate railroads, if the suggestion of the Senator is a tenable one, they would necessarily be roads which run from one State into another, and through States into other States, and throughout their whole length they would be interstate commerce roads.

Mr. NEWLANDS. So far as interstate commerce is concerned, they ought to be free from the control of the States. They are now free from control of the States.

Mr. BACON. The Senator misunderstands me. I mean so far as the exercise of corporate franchises is concerned. As it now is, no railroad company chartered in one State can exercise corporate franchise in another State without the consent of that State; and under the Senator's scheme, if it is to be operative, of course it would not be a matter of consent on the part of the State.

Mr. NEWLANDS. So far as the acquisition of existing lines is concerned my proposition does not involve acquisition without the consent of the States, and the States may impose any condition they choose upon that consent, just as they would in the case of a corporation organized under the law of a sister State.

There is another section which I have drawn here regarding the acquisition of interstate railroads. It is as follows:

Sec. 19. Such corporation may, with the consent of any State, upon the approval of the Interstate Commerce Commission, acquire the railroad of any corporation now organized under the laws of such State and may issue for the purchase thereof such amount of bonds and stock as may be authorized by the Interstate Commerce Commission; but such authorization shall only be made after a public hearing, at which the Attorney General shall appear, either personally or by one of his assistants, and no issue of bonds or stock therefor shall exceed the value of such road as ascertained by said commission.

With the consent of the Senate under which any railroad corporation is or may be organized, merger between such corporation and a corporation organized under this act may be accomplished under this act, and bonds and stock may be issued by any corporation organized under this act for such purpose, provided such proposed merger is approved by the Interstate Commerce Commission, and the bonds and stock issued in the accomplishment of such merger are also approved by such commission.

So the rights of the States are protected just as much as where a corporation, organized under the laws of a foreign State, is conducting the transportation of a particular State. The difficulty about the present system is, as I have already stated, that these corporations uniformly resort for their charters to the States whose

laws are most lax, and the result is overcapitalization, which is injurious to the entire country.

It may be said that this overcapitalization is not to be considered in the matter of the regulation of rates; and yet, as a matter of fact, it should be. These bonds and stocks are put out upon the country. The railroads make strenuous efforts to secure an income that will pay an interest upon them. They finally get a place and a value in the markets of the country; they fall into the hands of the purchasing public; and there is not a regulating board in the country that will not consider the value that has been built up in this way, and justly so, because society has stood by and allowed these values to accumulate without taking action to prevent it.

Upon this question of capitalization, I should say that even if we do not frame a national incorporation act, we should put a provision in this bill declaring that no corporation engaged in interstate commerce shall hereafter issue bonds and stocks without the approval of the Interstate Commerce Commission.

Mr. KEAN. Does the Senator offer that as an amendment to this bill?

Mr. NEWLANDS. I shall offer it.

Mr. President, I ask permission to incorporate in my remarks some quotations from the laws of various States regarding the control of capitalization and also some authorities.

The VICE PRESIDENT. Without objection, permission is granted.

Mr. NEWLANDS. I now wish to call attention to the great advance that is being made in the value of these securities, and unless we arrest it by providing for the control of capitalization by the Interstate Commerce Commission and the control of the return on their capital, we will find that this advance will increase in the near future. Thus, for instance, in 1896 the lowest quotation for New York Central was 88; in 1900 it was 125½; in 1905 it was 136¼. The highest quotation for these years was in 1896, 99½; in 1900, 145½; in 1905, 167½.

Mr. GALLINGER. Mr. President—

The VICE PRESIDENT. Does the Senator from Nevada yield to the Senator from New Hampshire?

Mr. NEWLANDS. I do.

Mr. GALLINGER. Has the Senator the quotations for the years 1893 to 1897?

Mr. NEWLANDS. I have not.

Mr. GALLINGER. I think they would be illuminating.

Mr. NEWLANDS. I imagine the quotations were then lower.

Mr. GALLINGER. Yes; very much lower.

Mr. NEWLANDS. For Pennsylvania, the lowest quotation in these three years was in 1896, when it was 99½; in 1900, 124½; in 1905, 131½. The highest quotation in these years was in 1896, 109½; in 1900, 149½; in 1905, 143½.

In the case of the Northern Pacific, the lowest quotations in these three years were as follows: In 1896, 12½; in 1900, 45½; in 1905, 165; and for the same years the highest quotations were: In 1896, 14½; in 1900, 86½; in 1905, 216½.

In the case of the Great Northern, the lowest quotations were: In 1896, 108½; in 1900, 144½; in 1905, 236. The highest quotations were: In 1896, 122; in 1900, 191½; in 1905, 335.

Let me say here that the consolidation of the Great Northern and the Northern Pacific was broken up by the Northern Securities decision. There can be no doubt that most of these mergers which have been accomplished are subject to the same legal objections to which that merger was subject; but they have not been tested in the courts. It would be a great misfortune to the country if these consolidations were broken up; I believe that consolidation is beneficial to the country. The burden imposed by consolidations arises from the fact that they are uncontrolled—uncontrolled as to capitalization and uncontrolled as to return on capital. From present indications, from the returns of these various companies, I have not the slightest doubt that after this rate legislation is over, unless national machinery for consolidation with proper guards is provided, these railroads will combine with a capitalization greater than ever has been known in the history of the country.

I shall print in my remarks the pertinent sections of a bill for national incorporation, which I am preparing, and shall close my remarks to-morrow.

The sections referred to are as follows:

#### SUGGESTIONS AS TO LEADING PROVISIONS OF A NATIONAL INCORPORATION ACT FOR RAILROADS.

##### FORMATION.

SECTION 1. Any number of persons not less than 15 may, under this act, form a corporation for the purpose of constructing, maintaining, and operating an interstate railroad, or for the purpose of acquiring and operating a railroad or railroads, already constructed and engaged in interstate commerce.

\* \* \* \* \*

##### CAPITALIZATION.

SEC. 3. Such corporation shall issue only such amount of bonds and stock as may be necessary for the construction, purchase, and equipment of the railroads constructed or acquired. No bonds or stocks shall be issued except for money paid or for property acquired at its actual value. The amount of such issue of stock or bonds shall in every case require the approval of the Interstate Commerce Commission, which shall grant public hearing regarding the same, to which all parties interested shall by public notice given by the commission be invited. The United States shall be represented at such hearings by the Attorney General or one of his associates. The commission shall certify in writing to the incorporators or to the corporation its determination, and shall record the same in its records, and all bonds and stock not issued in compliance with such determination shall be void as against such corporation.

\* \* \* \* \*

##### REPORTS.

SEC. 14. All corporations formed under this act shall make to the Interstate Commerce Commission such reports as are now by law required to be made to said commission, and such further reports as the rules of said commission shall from time to time require.

\* \* \* \* \*

##### TAXATION.

SEC. 17. National corporations duly organized under this act are hereby declared to be military and post roads and instrumentalities for the regulation of interstate commerce. The franchises, stocks, bonds, fixed evidences of indebtedness, operations, and traffic, and the corporation itself, shall be exempt from all taxation by any State or Territory other than as provided in this act, but the property of such corporation, including its right of way, track, real

estate, stations, office buildings, and equipment, shall be subject to assessment and at such average percentage of their actual value as shall be customary with reference to other property in such State or Territory. In lieu of such tax any State or Territory may impose a tax not exceeding 4 per cent on such proportion of the gross receipts of such corporation as the number of miles of track in such State or Territory bear to the total miles of track operated by such corporation. In estimating the miles of track, each mile of second track shall be regarded as equal to one-half mile of track, and each mile of third or fourth track or siding shall be estimated as equal to one-third of each mile of main track. For the purpose of computation by each State the Interstate Commerce Commission shall certify to the taxing authorities of each State or Territory the gross receipts for the preceding year of the total mileage, as aforesaid, and the proportion of such total mileage operated in such State or Territory.

#### STATE POLICE AND STATE RATES.

SEC. 18. Nothing herein contained shall be construed as interfering with the police laws of any State regarding railroads incorporated under this act and operating in such States, nor shall anything herein contained be construed as affecting the right and power of each State to regulate purely State commerce on railroads organized under this act. But the Interstate Commerce Commission may hold conferences from time to time with the regulating power of any State with a view to such harmonious adjustment and regulation of State commerce and interstate commerce as will protect the public against abuses or extortion, and the railroads against inadequate returns upon their investment, and promote the efficiency of such corporations as common carriers.

#### ACQUISITION OF STATE RAILROADS.

SEC. 19. Such corporation may, with the consent of any State, upon the approval of the Interstate Commerce Commission, acquire the railroad of any corporation now organized under the laws of such State, and may issue for the purchase thereof such amount of bonds and stock as may be authorized by the Interstate Commerce Commission; but such authorization shall only be made after a public hearing, at which the Attorney General shall appear, either personally or by one of his assistants, and no issue of bonds or stock therefor shall exceed the value of such road as ascertained by said commission.

With the consent of the State under which any railroad corporation is or may be organized, merger between such corporation and a corporation organized under this act may be accomplished under this act, and bonds and stock may be issued by any corporation organized under this act for such purpose, provided such proposed merger is approved by the Interstate Commerce Commission and the bonds and stocks issued in the accomplishment of such merger are also approved by such commission.

#### ACCIDENT AND INSURANCE FUND.

SEC. 20. It shall be a condition of the grant and continuance of any franchise to do business under this act that the corporation holding such franchise shall set aside annually 1 per cent of the gross receipts of said corporation, to be held as a fund in the Treasury of the United States for the payment of pensions to the employees of such corporation who shall have been disqualified for active service either by injury in the service or by age. The amount and time of payments, the investment of the fund, the disbursing of the same, and the entire management thereof, shall be under rules and regulations to be made and from time to time altered by the Interstate Commerce Commission.

#### BOARD OF CONCILIATION.

SEC. 21. The Interstate Commerce Commission is hereby empowered and directed to act as a board of conciliation between corporations organized under this act and their employees as to any dispute arising between said corporation and its employees in the matter of compensation, hours and conditions of labor, the protection of life and limb of said employees, and such power shall be exercised by such commission in accordance with rules and regulations to be made, and from time to time altered, by said commission.

## PENALTIES.

SEC. 22. Any officer, director, or agent of such corporation who shall be engaged in promoting or opposing any legislation or governmental action, either National or State, shall from time to time make oath to the Interstate Commerce Commission to a statement of his expenditures made in that behalf. No corporation organized under this act shall make any expenditure whatever for the purpose of aiding or defeating any political party or candidate for office, and for every such offense such corporation shall, on conviction, be subject to a fine of ——— dollars.

Any officer, director, or agent of such corporation who shall willfully and knowingly make, assist in making, cause, or direct to be made any false statement, material misrepresentation, or false entry in any book, report, return, account, or certificate required by the act to be kept, made, or filed, shall be, upon conviction, subject to a fine of not more than ——— dollars, or to imprisonment for not more than one year, or both, and shall furthermore be liable in a civil action for damages caused to any creditor or stockholder thereby.

Any officer, director, or agent of such corporation who shall willfully refuse or neglect to perform any duty imposed upon him by this act for which refusal or neglect a penalty is not therein otherwise expressly provided, shall be subject, upon conviction, to a fine of not more than ——— dollars, or to imprisonment for not more than one year, or both.

All fines under this act shall be paid into the accident and insurance fund aforesaid.

## DIVIDENDS.

SEC. 23. No such corporation shall pay or distribute to its stockholders in any form during any one year a dividend or dividends exceeding in total amount 5 per cent upon the entire capital stock. If after the payment by such corporation of its operating expenses, maintenance, improvements, and betterments, its taxes, its interest on bonded or other indebtedness, and its contribution to the accident and insurance fund, there shall be a surplus over and above the amount necessary to pay such dividend of 5 per cent per annum, the surplus shall be apportioned as follows: One-half thereof shall be paid into a guaranty fund in the Treasury of the United States for future dividends in case of a slackening of business, such fund to be controlled and invested by the Interstate Commerce Commission, and one-half thereof shall be paid into the accident and insurance fund provided for by this act.

No reduction of rates as to any given railroad shall be made or ordered by the Interstate Commerce Commission or by any other governmental agency, which shall make it reasonably probable that such 5 per cent dividends can not be earned upon the total capital stock of the corporation.

## JURISDICTION OF SUITS BY AND AGAINST RAILWAY COMPANIES.

SEC. 24. All national railway companies incorporated under the laws of the United States shall, for the purpose of all actions by or against them, whether at law or in equity, be deemed citizens of the States in which they are respectively operating, and in such cases United States circuit and district courts shall not have jurisdiction other than such as they would have in case such corporations were individual citizens of such States, respectively. The provisions of this section shall not be held to affect the jurisdiction of the courts of the United States in cases in which the United States is a party or cases for winding up the affairs of any such corporation.

## RULES.

SEC. 25. The Interstate Commerce Commission may make rules necessary for the complete enforcement of the provisions of this act, and from time to time alter, amend, or repeal the same.

## AMENDMENT OR REPEAL.

SEC. 26. This act shall be at all times subject to amendment, alteration, or repeal by act of Congress.

THURSDAY, APRIL 5, 1906.

Mr. NEWLANDS. Mr. President, in my remarks of yesterday I briefly answered the inquiries made by the Senator from Idaho [Mr. Heyburn] and the Senator from Georgia [Mr. Bacon], both of whom had some misapprehension regarding the purpose of my proposed amendment providing for the national incorporation of railways.

The Senator from Idaho seemed to be under the impression that it was proposed to exempt these national corporations altogether from State taxation. I wish to say that that was not my purpose. My purpose was simply to provide a method of taxation which would be uniform throughout all the States in the Union and would result in a tax which would be mathematically exact, thus relieving the railroads of the necessity of interfering in politics, as they do in every State in the Union, upon the subject of taxation, and also making the tax a fixed and certain factor in the calculation of rates.

#### MERGER—HOW ACCOMPLISHED.

Then, as to the inquiry of the Senator from Georgia, who asked how I proposed to have the merging of State corporations with national corporations accomplished, I have to say that I propose that merger shall be accomplished in the same way that the merger of the corporations organized in different States is now accomplished.

As it is, Mr. President, we find that the 2,000 or more railroads of this country are already practically merged into 10 or 12 systems, and that each one of these systems is incorporated under the laws of a particular State. Now, how is it that this merger has already been accomplished? It has been accomplished under laws passed in the different States permitting such merger. These laws vary in their character and in their expression, but they all have a common purpose, which is to permit the consolidation of existing lines, the consolidation of State roads with roads organized under the laws of other States. Some of these laws simply permit consolidation with corporations created under State laws. Others also permit consolidation with corporations created under United States laws.

As to the bonds, the process is easy. Each railway system would organize a national corporation under the national law and would transfer all its property to such corporation subject to the existing bonded indebtedness. As the existing bonds matured they would be retired by an issue of the bonds of the new company, and thus in the end the bonds of the new national corporation would be substituted for the bonds of the constituent State corporations. As to the stock, the process would be no more difficult than that frequently gone through with in existing consolidations of State corporations. The stock of the old companies would be surrendered and the stock of the new company substituted. Of course, the stock issue of the new company must be subject to the approval of some tribunal, such as the Interstate Commerce Commission, in order to avoid overcapitalization. But I take it that a fair method of valuation of the stock of the existing road could be secured. Individually I should favor a very liberal adjustment. I should recognize the market value

of existing stocks, whether watered or not. The watering of stock in the past has had many causes, among them the difficulty of promoting such enterprises without giving investors some speculative chance. The railroads have been obliged to work out their own salvation, unaided by wise laws, and while possibly some of these exaggerated stock issues have been the creation simply of stock speculators many of them have been necessitated by financial exigencies. At all events, the stocks are now in the hands of the investing public and have largely gone out of the hands of those who originally issued them. If we can only guard the stock and bond issues of the future and prevent overcapitalization—all of which is provided for by my proposition—we can easily afford to validate much of the overcapitalization of the past.

The amount of stock which should be issued in new national corporations to the stockholders of the old constituent companies could be determined by the Interstate Commerce Commission.

The merger is accomplished by various methods. The stock is often interchanged. The company which desires to accomplish the merger of a railway in another State provides for the issue of stock, which is issued to the stockholders of the merged railroad in exchange for their existing stock.

Merger can be accomplished through a national corporation as well as through a foreign State corporation. The method is perfectly simple. It is a method which has been worked out in years of financiering. If the railroads wish to come under this national system, there will be no difficulty about their securing the consent of the States in which they at present operate, and there will be no difficulty about their financing the operation.

The advantage of a national incorporation act is that instead of allowing the capitalization to be, as at present, unrestricted, subject only to the judgment or caprice of those financially interested, the Government of the United States, through its Interstate Commerce Commission, will sit in judgment upon the capitalization and determine it justly and fairly.

The Senator from Georgia seems to assume that the States will be unwilling to give their consent. Do they not at present give their consent to unrestrained and unrestricted consolidation? Have not the States in the South, 10 or 12 in number, permitted the merger of their two or three or four or five hundred railroads, as they existed originally, into two great corporations, each of them foreign, one organized under the laws of Virginia and the other organized under the laws of Connecticut? Has there been any difficulty there in obtaining consent? If you go to the statutes of these States, you will find consent expressly given; and in all of the laws of Virginia you will find consent given not only to merger with corporations organized under the laws of the State, but consent given to merger with corporations organized under the laws of the United States.

Now, are the people of the United States in earnest in demanding that capitalization shall be restricted? Does the Senator from Georgia doubt that? Does he doubt that the people of the United States insist that there should be some restriction of the capitalization of these great systems, or does he think that the people are content to allow these great promoters to juggle with the matter, unrestrained and uncontrolled?

I take it the people of the United States are in earnest upon this question; I take it that the people of the Southern States are in earnest upon this question; and if a method is pointed out through national incorporation by which capitalization can be restrained (and under the existing system of State corporations overcapitalization is not restrained) I submit that as a choice between two foreign corporations, one the corporation organized under the laws of a sister State in whose legislation they have no share, and the other organized under the laws of the United States in whose legislation they all share, they will seek the shelter of the latter.

#### TAXATION BY STATES.

The Senator also objects upon the ground that this system involves the surrender of the power of taxation by the States. Mr. President, it is not essential to this plan of national incorporation that we should include in it a scheme of taxation of railroads. It is not at all essential. It is desirable, but it may be left out if it is the judgment of the Senate and the House that it should be.

I point out its desirability simply because of the great powers of discretion now given to local assessing and taxing bodies, powers of discretion which involve the assessment of these properties at from \$10,000 a mile—the mere cost of their rails and the right of way—up to \$75,000 and \$100,000 a mile, including their franchises and valuations based upon the market value of their stock and bonds.

The scheme of taxation also involves the possibility of double taxation, for the bonds and stocks in the hands of individual holders may also under existing conditions be assessed and taxed.

It is this very uncertainty that keeps these railroads in politics. They are obliged to be in politics, because they have a property value of \$10,000,000,000 subject to the discretion of these various taxing bodies, subject to the passion and the caprice of different localities, and subject to the legislation of reformers and cranks and black-mailers. Can we expect them under such conditions to keep out of politics? I want to keep them out of politics by providing a fair and uniform system of taxation that will be absolutely certain in its mathematical calculation, that will leave nothing to the discretion of the taxing officers.

When we do that we accomplish two purposes. We keep the railroads out of politics on the subject of taxation, and we also secure an additional factor of certainty in the determination of rates, which involves the ascertainment of the gross receipts, the operating expenses, and the taxes, and a fair return upon capital. The taxes, therefore, are a factor in the determination. We now have varying taxes, which may be this year one-third of what they will be next year, as in the case of Michigan, for recently by a new system of taxation the taxes of the railroads in that State have been trebled in amount. So all over the United States we may have this varying taxation, which tends to uncertainty in the determination of rates.

Mr. President, I have already stated that it is not necessary to put in this bill a scheme of taxation, for the main purpose of national incorporation would be to control capitalization and interest return

as factors in rate fixing, but it is desirable; and I believe on an appeal to the common sense of the American people upon this proposition Congress can declare that these railroads, incorporated under a national incorporation act are national instrumentalities in the exercise of the great national powers of the common defense, of the establishment of post offices and post roads, and of the regulation of interstate commerce, and when it declares them to be instrumentalities of the National Government it can, if it chooses, absolutely exempt them from taxation. I do not propose it shall do that, but if it can do the greater thing it can do the less. It can then prescribe the method of taxation and the rule of taxation by the various States.

Under the method which I suggest, a tax of a certain percentage upon the gross receipts of national railroads, to be levied by the States, according to mileage, we have a tax that may be mathematically fixed, that will be just to the railroads, that will be just to the States, and will retain for them the revenues which they now have and possibly secure them greater revenues than they now have. and at the same time secure a certain factor in the regulation of rates which will be of incalculable benefit both to the State boards and to the national board.

#### RATE MAKING A GUESS.

At present rate making is a guess. Ask any member of the Interstate Commerce Commission that question and he will say it is a guess. It is true that the Supreme Court has endeavored to reduce it to something of a science by saying that the commission must have regard to value, to cost of construction, to the original cost, to the market value of the stocks and bonds, and to a fair return upon the valuation after considering all these factors. But these factors should be as certain as possible.

We must have a valuation. First, I prefer to see a valuation represented in the stocks and bonds fairly and not in an exaggerated form, and so I urge national incorporation as a means to that end.

But at all events it seems to me that the Congress of the United States in parting with its legislative discretion on this subject and turning over the regulation of rates to the Interstate Commerce Commission is bound to fix a rule by which that commission shall proceed; it is bound to provide for valuation, and it is bound to provide for a fixed return in the shape of interest upon that valuation. Then it will leave to the commission only the mathematical process of working out the calculation and distributing the burdens of transportation within the rule established by Congress upon all the various industries and commerce of the country.

Mr. HEYBURN. I should like to ask the Senator a question.

The VICE PRESIDENT. Does the Senator from Nevada yield to the Senator from Idaho?

Mr. NEWLANDS. Certainly.

Mr. HEYBURN. Do I understand the Senator to say that we are bound to fix a rate of return upon the valuation in fixing rates?

Mr. NEWLANDS. Yes; we ought as a matter of duty to do so. What I meant to say was that we are now turning over to the Interstate Commerce Commission the power to fix just and reasonable rates; that that is all the power that Congress has. It could not give to

the commission the power to fix unjust and unreasonable rates. Under the limitations of the Constitution all that Congress can do is to fix just and reasonable rates, and when we turn over that power to the commission we turn over all the power we have.

Mr. HEYBURN. Right there I should like to ask the Senator a question.

Mr. NEWLANDS. If the Senator will permit me further, I think in order to fix the constitutionality of this legislation beyond a doubt we ought in this very act to fix the rule, the standard, by which this commission should act.

Mr. HEYBURN. The measure?

Mr. NEWLANDS. The measure.

Mr. HEYBURN. The measure of what constitutes a just and fair return?

Mr. NEWLANDS. Yes.

Mr. HEYBURN. Would the Senator think we could go so far as to say it should not be more than a certain per cent upon the value?

Mr. NEWLANDS. I do. Not more and not less than a certain per cent.

Mr. HEYBURN. Then I will renew the question I submitted the other day. Would that not be for the Government to guarantee a given income upon the investment of any transportation company?

Mr. NEWLANDS. Not at all.

Mr. HEYBURN. If we say that they shall be entitled to earn 6 per cent, does that not give them the right to charge such tolls as will result in producing 6 per cent on their investment?

Mr. NEWLANDS. Of course it does and it ought, if that is the return fixed by Congress as a reasonable return.

Mr. HEYBURN. Would it not result, then, in this, that the Government, by legislation as directly as the Government can act, guarantees a given fixed rate of income upon the investment represented by the stock and bonds of every transportation company in the land? Does it not amount to that?

Mr. NEWLANDS. Not a legal guaranty, Mr. President. It simply involves nonreduction by the commission of the rates of a corporation as long as they produce only the return fixed by law.

Mr. HEYBURN. If we say that a reasonable rate shall be fixed and that 6 per cent shall constitute a reasonable rate of return to the company, why is not that true? And if it is true, do we want to do that?

Mr. NEWLANDS. I will say, in reply to that, that the fixing of a limit or percentage which these railroads shall receive upon a valuation fairly ascertained is not a guaranty of that percentage and it never has been so regarded in the legislation of this country.

Mr. HEYBURN. Is that an authorization? I should like to substitute the word "authorization" to the company to fix its tolls so that they would insure a return of that percentage.

Mr. FULTON. Mr. President—

The VICE PRESIDENT. Does the Senator from Nevada yield to the Senator from Oregon?

Mr. NEWLANDS. Certainly.

Mr. FULTON. I should like to ask the Senator from Idaho [Mr. Heyburn] a question, with the permission of the Senator from Nevada [Mr. Newlands].

Mr. NEWLANDS. Certainly.

Mr. FULTON. Suppose Congress should enact a law providing that no corporation created pursuant to an act of Congress, incorporated by virtue of a national incorporation act or law of Congress, should be permitted to realize over 4 or 5 or 6 per cent, would that be a guaranty that they should realize that amount?

Mr. HEYBURN. Not unless it was coupled with the other suggestion that I understood the Senator from Nevada [Mr. Newlands] to make, that we were authorized to say what should constitute a fair and reasonable return, and that having determined that the corporation was entitled to earn it, of course, it naturally follows that it would be entitled to adjust its tariff rates in such a way as to produce a result of that kind, taking the two propositions together.

Mr. NEWLANDS. In reference to that I would say, of course, a corporation has a right to adjust its rates so as to produce the return fixed by Congress, and the interstate Commerce Commission, in exercising its supervisory power over rates, would be compelled to have in view the return fixed by Congress; and it is only fair that the corporation should have that return, if it is possible for the corporation to get it out of its business.

Mr. HEYBURN. If I do not annoy the Senator by an interruption, I should like to inquire if there is any other department of the business world where the Government undertakes to insure to the investor any return whatever? Why not as well the manufacturer demand the same rights as the transportation company? What difference is there in the relation which they bear to the economic system of our Government?

Mr. NEWLANDS. The shortest answer to that is that the Government does not insure. The Senator might as well insist when we pass usury laws in the States of the Union providing that the lawful rate of interest shall not exceed, say, 6 per cent, that we guarantee every investor that he will receive 6 per cent upon his money. This limitation of return is no new thing in legislation. The United States Government has done it in previous legislation. When Congress incorporated the Union Pacific Railroad or the Texas Pacific—I forget which—it provided that the rates should not yield a return of more than 10 per cent upon the investment.

Ten per cent was then the going rate of interest, just as 4 or 5 per cent is the going rate of interest now. The Government gave that corporation the power to fix rates that would yield it 10 per cent, and provided that the regulating power of Congress should be only applied in case the return exceeded 10 per cent. That is a case in the history of our legislation where the return was absolutely fixed by the act of Congress.

In the State of Massachusetts I understand the returns to all the electric railroad companies are fixed by law. No corporation of that character there can declare any dividend of over 6 per cent. All profits over that amount are divided, one half going to the State and the other half going to the corporation.

The result is that none of these companies ever return more than 6 per cent. They keep down their rates. They expend their income in new investments, in extensions of their lines, and in the betterment of their roads.

I repeat, this is not at all a new thing in legislation. I call the attention of Senators to one thing, which is that the Supreme Court has said that fixing rates is not to be a matter of guesswork; that the railroads are entitled to a fair return upon a fair valuation. If that is so, it seems to me that it is the duty of Congress to provide for the valuation. It is an essential. The railway commissioners of all the States have been in session recently in Washington, and you will find in the morning's paper that they have adopted a resolution calling upon Congress to provide for the valuation of railroads, their appurtenances, and their equipment in every State of the Union. That is to be done not by the local commissions, but by the national commission.

These men, experienced in the business of regulating railroads, know how adrift they are under present conditions; they know that they can not regard simply the capitalization of these roads. In some cases such roads are undercapitalized, and in many other cases they are overcapitalized. Nor can they always take into consideration the market value of the securities in determining the value of their property, because these securities are up and down. I read some quotations yesterday to show that the stock of certain roads had increased in value from 300 to 600 per cent in 10 years. So this association of State railway commissioners has asked Congress to provide for the valuation of these properties, and it seems to me their recommendation is entitled to some consideration here.

What valuation would a national corporation act provide for? It would provide for an initial valuation at the very time when the company was organized. When the company was organized and presented its scheme of consolidation to the Interstate Commerce Commission it then would have to state to that commission the amount of bonds and stocks that were to be issued. The commission then would make an inquiry as to the value of the property, in order to determine upon the amount of its capitalization, either approving the amount submitted or reducing it if the circumstances warranted it, and that corporation would then be allowed to issue only the amount of stocks and bonds so approved. From that time on we should have a permanent valuation of the property of that corporation. To that may be added from year to year the amount expended in improvements and betterments, less the depreciation that takes place. Thus throughout the years we should have a constant valuation of these properties accomplished by the aid of the legislation which I suggest, and the value would be represented in the capital, in the stocks and bonds.

This system would make these railroad securities the best securities in the country, and railway bonds could be negotiated at 3 per cent under such a system. As to the stocks, instead of being variable, as they are now, they would be fixed and certain in value and go into the hands of the investing public instead of being controlled and manipulated, as they are now, by the stock speculators.

Mr. HEYBURN. Mr. President—

The VICE PRESIDENT. Does the Senator from Nevada yield to the Senator from Idaho?

Mr. NEWLANDS. Certainly.

Mr. HEYBURN. If the Senator will permit me, before leaving that subject I will ask may not this investigation and sifting down of the

values of corporate property for the purpose of arriving at a basis upon which to estimate what would constitute a fair return be as well accomplished without the national incorporation feature suggested by the Senator?

Mr. NEWLANDS. As I suggested in my remarks yesterday, if we do not conclude to provide for national incorporation in this bill we should at least provide for a valuation of these railroads engaged in interstate commerce.

Mr. HEYBURN. I will say to the Senator that I am in hearty accord with him in regard to that matter. I have endeavored to cover it by a bill already introduced and before the committee, providing for just as stringent an investigation as is suggested by the Senator, to be had not through the means of national incorporation, but allowing the corporations to exist under the statutes as we find them, and doing it through a board of interstate commerce commissioners, and arriving at this information annually, for the purpose of having a correct basis of value upon which to estimate what would constitute a fair return.

I do not believe that the Senator will meet with any opposition in this body or elsewhere if he confine his amendment to that proposition by providing a method of determining real values, because it is essential that we should have a method of determining them. It is obvious, I think, to every Senator that before you can determine what would constitute a fair and just return you must know upon what that return is to be based.

#### OPPORTUNITY FOR AMENDMENT.

Mr. NEWLANDS. I am very glad to know that the Senator from Idaho has introduced such a bill; but let me make a suggestion to the Senator from Idaho, and that is that he put his bill in the shape of an amendment to this bill, for experience shows that legislation upon the subject of interstate commerce is very rare and infrequent. We have now reached a crucial point in that legislation; we have a bill before us to which any amendment in the line of reform can be attached, and I suggest to the Senator that he frame an amendment to this bill, for otherwise I should very much fear that the valuation which he calls for will be indefinitely postponed.

Mr. HEYBURN. Mr. President, I would say, in reply to that suggestion of the Senator, that it has not occurred to me that we have reached a point in the consideration of this bill where it is necessary to formulate every suggestion that may occur to the minds of Senators in the shape of amendments. I think we are from day to day gathering new light upon the scope and effect of this legislation. I have in my desk, with a view to considering the propriety of introducing it as an amendment, a provision along the line suggested in the remarks that I have made; but I do not feel that the time is ripe yet or that the necessity has arisen for introducing it. I am not at all apprehensive that a vote will be reached upon this bill with such unexpected haste as to make it dangerous to defer the consideration of these measures until we are quite sure that our minds are clear as to exactly what we want to do.

Mr. NEWLANDS. If the Senator will review the history of legislation upon the subject of interstate commerce, he will find that Con-

gress has not very often awakened from a condition of apathy and inertia and indifference upon the subject. Interstate commerce was given over without let or hindrance to the railroads of the country until 1887. Then it was only after a very severe struggle, in which the Senator from Illinois [Mr. Cullom] took so prominent a part, that the people were successful in securing the passage of legislation that brought them only some degree of regulation and control.

Mr. HEYBURN. Yes; but I will suggest, if I may, that it took eight years to reach any conclusion on the question of interstate commerce.

I remember—that is, if my memory serves me correctly, and I think it does—hearing a Member of the House of Representatives from Texas at that time, Mr. Reagan, introduce the original interstate commerce bill in that body. I listened to its discussion through several winters from the gallery, looking down upon it, and I followed it through the public press through all the years while it dragged along; and it took, I believe, about eight or nine years to arrive at any conclusion whatever on the subject. Then, after an interval of about that many more years, Congress attempted to resume the consideration of it. So, I repeat that I have no fear of such a hasty determination of the conclusion of this question in this body as to make it dangerous to postpone the introduction of amendments.

Mr. NEWLANDS. Of course, if the Senator thinks that 10 or 12 years is a mere trifle in the consideration of the question of this reform, my appeal to him will have no weight; but, I repeat, if the Senator will review the history of legislation upon this subject, he will find that it has been very difficult to wake Congress from indifference and apathy. It was not until 1887, after eight years of agitation, that the meager bill which was passed upon this subject found a place in the statute book. Years and years were involved in the discussion of rebates and preferences, but it was not until the great trunk lines of the country, headed by the Pennsylvania Railroad Co. three years ago, came to the conclusion that it would be an advisable thing to have legislation upon the subject that legislation was enacted.

Since then Congress has rested upon its oars, and Congress will probably rest for 5 or 10 years more upon its oars after this bill is enacted. I warn every friend of reform upon this question, every man who views with apprehension the growing power of these railroads, who views with apprehension their increasing capitalization, who views with apprehension their activity in politics—I warn them that if they wish legislation looking to reform upon this subject put upon the statute book now is the time and this bill is the place.

#### POLICE POWERS OF THE STATES.

Mr. President, I wish to state that my suggestion involves no interference with the police powers of the various States. This idea of national incorporation fully comprehends the fact that there are two sovereigns that are dealing with the question of commerce—the great National sovereign and the lesser State sovereign, each supreme within the limits of its jurisdiction; the National Government, absolutely supreme upon every inch of American soil, regardless of

State lines, within the powers granted to it by the Constitution, and the States, absolutely supreme in all the powers relating to sovereignty outside of the powers granted to the Nation. Here we have machines called "railroad corporations" running railroads on American soil through American States, used for State commerce and for National commerce—State commerce under the control of the States, and National commerce under the control of the United States.

It is simply a question of judgment between us as to whether we shall leave such machines to be created by the State sovereignty under its powers as to State commerce or whether we shall permit them to be created by the national sovereignty under its powers as to interstate commerce. These railroads have grown from mere local systems into great national systems. I believe it will be a proper thing for the great national sovereignty to create the charters for these railroads. I do not propose to force them into a national incorporation. I hope it will be so just and so fair, and relieve them of so many complications, political and otherwise, that they will gladly seek the shelter of national incorporation. At the same time, I do not propose to interfere with the police or taxing powers of the States, except so far as is necessary to establish a uniform rule of taxation, which will operate to the advantage of every State in the Union.

Mr. SPOONER. Mr. President—

The VICE PRESIDENT. Does the Senator from Nevada yield to the Senator from Wisconsin?

Mr. NEWLANDS. Certainly.

Mr. SPOONER. If the Senator's theory of Federal incorporation were adopted, and every railroad corporation in the United States engaged in interstate commerce and also in State commerce were a Federal corporation, does the Senator contend that that would oust the regulatory power of the State?

Mr. NEWLANDS. Not at all.

Mr. SPOONER. Then what would be gained? Although railroads are State corporations, so far as interstate commerce is concerned Congress now has the power to control them. The States can not control them. The States control intrastate commerce. How would that change the situation essentially?

Mr. NEWLANDS. I will say that when I said "not at all" I meant that the bill which I have submitted does not affect the regulatory power of the States over intrastate commerce. As to whether a law could be so framed as to affect that, I will not discuss at present. I have been inclined to think that if the National Government should create a national corporation for interstate commerce it might possibly be regarded that any attempt by the State to regulate the State commerce carried upon that road would be regarded as burdening a national instrumentality and as such involving possibly the power to destroy it. The courts might possibly uphold a provision in a national law which forbade the State to regulate State commerce on a national railroad.

Mr. SPOONER. The question, Mr. President, which the Senator makes as to the power to destroy would obviously arise only as to the exercise by the State of its power of taxation, but—

Mr. NEWLANDS. The decisions thus far relate entirely to taxation.

Mr. SPOONER. Yes; to taxation; but it is undeniable that to-day Congress has the power to create Federal corporations for conducting interstate commerce. In the Senator's idea, which is a very large and far-reaching one, there is much of merit; but my question really goes to this, whether, without an amendment of the Constitution, what the Senator has in mind could be effectively, in any large degree, carried into operation. It is utterly impossible, I take it, under the existing Constitution, for Congress to create a railroad corporation to engage in interstate commerce, which it may do, which could oust the States of their regulatory power of purely intrastate commerce. So that we would still have what the Senator deplures, Federal regulation of interstate commerce and the State regulation of purely domestic or State commerce. That would be far away from what the Senator wants to accomplish.

Then, as to the power of taxation, is the Senator certain at all that the States in taxing private property—for a railroad chartered by the Federal Government would be private property within the boundaries of a State—can be made to enforce a rule of taxation which is created by Congress? The States exercise their taxing power under their own constitutions. Is it competent for Congress, under the existing Constitution, to take away from a State in any degree the power to tax property within its own limits, its own boundaries?

The Senator's plan is one entitled to great respect and consideration. There are large views in support of it, but what has troubled me about it is the constitutional power to really efficiently carry it into effect by any bill which we can enact.

Mr. NEWLANDS. Mr. President, I will endeavor to answer both propositions to which the Senator has referred, namely—

Mr. SPOONER. They are questions, not propositions.

Mr. NEWLANDS. As to whether we can legislate in such a way as to deprive the State of its regulatory power over intrastate commerce, and, second, as to whether we can legislate in any way as to affect the State's power of taxation over railroad property within the State.

As to the first proposition, I will say that there is no effort made in the measure which I propose to affect the power of the State over purely State commerce. That would remain; but I call the Senator's attention to the fact that whilst it is, of course, inconvenient to have forty-five State commissions acting at the same time with one national commission upon the subject of these rates, and whilst it would be very much better, in my judgment, to have one national commission that would regulate the rates of both State and intrastate commerce, when that commerce is conducted by the same road, yet as to rates the ultimate control is in the United States Supreme Court. If the rates are fixed by a State commission unfairly and unjustly and in such a way as to deprive the corporation of a fair revenue, the corporation can take that case into the United States courts and to the Supreme Court and they will be adjudged invalid. So that in the end the power of the United States is exerted in one form or the other, either through the legislature or the courts, upon commerce, both State and national.

As to the power of taxation, I admit that it is an open question, not yet fully determined by the courts; but I submit that all the decisions indicate clearly that if the United States incorporates a

railroad as a national instrumentality and declares it exempt from State taxation, the court will enforce the exemption. There is a case in which the question of the exemption from State taxation of a railroad organized under a national charter has been considered, and that is the case of *Railroad Company v. Peniston* (18 Wall., 5), where the Union Pacific Co., a national corporation, operating under a national charter, but without any exemption asserted in the statute from its liability to State taxation, claimed that because it was a national corporation and a national instrumentality its property was by implication exempt. There were eight judges who sat in that case. Three of the judges declared that without any express exemption in the statute the entire property of the railroad company as a national instrumentality was exempt from State taxation. As to the other five judges, four declared that the exemption would apply only to the powers and operations of the national instrumentality and not to the property used by the agent in charge of it. But the three judges who held the other way declared that the railroad itself was the instrumentality for carrying out the power, and that therefore it was exempt. The fifth judge was between the two. He held that such property could be exempted by Congress from taxation, but that it was clearly the intention of the statute not to exempt it. So he held in that case that the property was subject to taxation. If the statute in that case had expressly declared that the railroad property should be exempt from State taxation, the court would have stood four to four upon that proposition. In the decisions since that time the Supreme Court has expressly reserved that question as an open question for the future.

Mr. TELLER. Mr. President—

The VICE PRESIDENT. Does the Senator from Nevada yield to the Senator from Colorado?

Mr. NEWLANDS. Certainly.

Mr. TELLER. I would ask the Senator if he thinks there is no distinction between that case and a case where the Government chartered a road running through a State or attempted to do so? The line to which the Senator has referred, as he must know, was chartered to run through the Territories of the United States, and not through the States. It commenced in a Territory, ended in a Territory, and ran only through Territories.

Mr. NEWLANDS. That is true, Mr. President. There was only one of the Pacific railroads, I believe, which ran from a point in one State to a point in another, and that was the Texas Pacific Railroad. But the court does not take that into consideration at all, as the Senator will see.

Mr. SPOONER. The Senator is mistaken about that. The Northern Pacific is another.

Mr. NEWLANDS. I was not aware of that. I thought it was entirely constructed through Territories.

Mr. SPOONER. No; not at all.

Mr. TELLER. I want to call the attention of the Senator—

Mr. NEWLANDS. I will read the language—

Mr. TELLER. I want to call the attention of the Senator to the fact that in the litigation of which he speaks—the Union Pacific litigation—the parties claimed that in the act the road was exempted from

taxation. It was in the power of Congress to have exempted that property from taxation, if it saw fit. Why? Because it was to run through a Territory absolutely under the control of the General Government. While the power to exempt it in a Territory exists, it might not exist, and I do not think it does exist, in a State.

Mr. NEWLANDS. The Senator is mistaken in his assumption that the counsel claimed in that case that the statute itself exempted the property from taxation. It was admitted on both sides that it did not.

Mr. TELLER. No; I did not mean to say it exempted it in words, but in principle, because it was performing a duty for the General Government and had a charter from the General Government.

Mr. NEWLANDS. But the question as to its being a Territory was not considered, for it must be recollected that the Territories had given way to States, and they were complaining then of State taxation. I will read from the opinion of Judge Bradley, who wrote the dissenting opinion, and who states the case also for Mr. Justice Field:

The Union Pacific Railroad Co., therefore, being a United States corporation, created for national objects and purposes, and deriving its existence, its powers, its duties, its liabilities, from the United States alone; being responsible to the United States, now as formerly, for a whole congeries of duties and observances; being subjected to the forfeiture of its corporate franchises, powers, and property to the United States and not to any individual State; being charged with important duties connected with the very functions of the Government, every consideration adduced in the cases of *McCullock v. Maryland* and *Osborn v. The Bank* would seem to require that it should be exempt not only from State taxation, but from State control and interference, except so far as relates to the preservation of the peace and the performance of its obligations and contracts. In reference to these and to the ordinary police regulations imposed for sanitary purposes and the preservation of good order, of course, it is amenable to State and local laws.

As an instrument of national commerce as well as Government operations, it has been regulated by Congress. Can it be further regulated by State legislation? Can the State alter its route, its gauge, its connections, its fares, its franchises, or any part of its charter? Can the State step in between it and the superior power or sovereignty to which it is responsible? Such an hypothesis, it seems to me, is inadmissible and repugnant to the necessary relations arising and existing in the case. Such an hypothesis would greatly derogate from and render almost useless and ineffective that hitherto unexecuted power of Congress to regulate commerce by land among the several States. If it be declared in advance that no agency of such commerce, which Congress may hereafter establish, can be freed from local impositions, taxation, and tolls, the hopes of future free and unrestricted intercourse between all parts of this great country will be greatly discouraged and repressed.

Again:

But it is contended that the laying of a tax on the roadbed of the company is nothing more than laying a tax on ordinary real estate, which was conceded might be done in the case of the United States Bank, in reference to its banking house or other lands taken for claims due in the course of its business. This is a plausible suggestion, but, in my apprehension, not a sound one. In ascertaining what is essential in every case, respect must always be had to the subject matter. The State of Maryland undertook to tax the circulation of the United States bank established in that State, etc.

Mr. Justice Bradley goes on to state the case with reference to the United States Bank, and then continues:

But the primary object of a railroad company is commerce and transportation. In its case a railroad track is just as essential to its operations as the

use of a currency or the issue or purchase of bills of exchange is to the operations of a bank. To tax the road is to tax the very instrumentality which Congress desired to establish, and to operate which it created the corporation.

Such is the opinion of three of the eight justices who sat in that case.

The opinion of four of the justices was delivered by Mr. Justice Strong, who, after referring to the object and purpose of the legislation creating the Union Pacific Railroad, said (p. 32):

Admitting, then, fully, as we do, that the company is an agent of the General Government, designed to be employed and actually employed in the legitimate service of the Government, both military and postal, does it necessarily follow that its property is exempt from State taxation?

Emphasizing the difference between the operations of an agent and the property thereof, Justice Strong said (p. 33):

It may therefore be considered as settled that no constitutional implications prohibit a State tax upon the property of an agent of the Government merely because it is the property of such an agent.

Then, after consideration of the various cases bearing upon the general question, Justice Strong summed up as follows (pp. 36-37):

It is, therefore, manifest that exemption of Federal agencies from State taxation is dependent not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the Government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of Federal powers.

Eight justices heard this case, and the opinion of the court upholding the validity of the tax was concurred in by four of them. A fifth, Judge Swayne, concurred in the judgment, but said:

I see no reason to doubt that it was the intention of Congress not to give the exemption claimed. The exercise of the power may be waived, but I hold that the road is a national instrumentality of such a character that Congress may interpose and protect it from State taxation whenever that body shall deem it proper to do so.

So that Judge Swayne would have decided against the majority of the court had there been exempting legislation. Two other justices flatly dissented, giving an opinion to the effect that such State taxation was invalid, even in the silence of Congress. And the eighth justice merely remarked: "I dissent from the opinion of the court."

All that can be claimed from this decision as to the power of Congress to exempt a corporation from taxation by affirmative legislation is that the court was evenly divided, and even this can not be fairly claimed, for the case of exempting legislation was not before the court, and the opinion of the four justices who upheld the tax does not contain a word which denies the power of Congress to exempt the property which it expressly declares to be its chosen instrumentality.

So, out of eight justices four expressly declared that Congress could exempt the property of a national instrumentality in the hands of a national agent from State taxation, and the question therefore is an open one to be determined in the future.

Mr. TELLER. In that case the court did not hold what the Senator says it did. It simply held that in that particular case, where the

company had been chartered by the general authority of the Government in a Territory, it was within the power of Congress. That is all it did hold. I am very familiar with that case.

Mr. NEWLANDS. Of course the decision was with reference to that particular case.

Mr. TELLER. I do not want to discuss it with the Senator, but I will say to him that the court was dealing with the particular case of the railroad which was brought before them, and they took that charter and were simply saying what Congress might have done, but what Congress did not do. That case is pretty well understood, and the Senator can find in it no support for his contention. Of course, if the Senator depends upon the law of the minority, he can find a good deal of law that is not recognized as the law. A man may sometimes think it is pretty good sense, but the law is what the majority holds.

Mr. NEWLANDS. Undoubtedly the law is what the majority holds, namely, that where a statute does not exempt property employed by a national corporation in the exercises of its powers, that property is not impliedly exempt from State taxation. But four of the judges expressly held that where the statute does exempt, the property would be exempt from State taxation.

Mr. TELLER. In that particular case.

Mr. NEWLANDS. And hence I submit I am justified in the statement that the question is an open one. I think the logic and the reasoning are entirely with the four judges who declared that the National Government, creating a corporate agent for the purpose of carrying out a national power, stamping the property of that agent as an instrumentality for the exercise of that power, can protect it from destruction by another sovereignty upon whose soil it has a right to operate. There can be no question of the power of a national corporation to enter any State without the consent of that State and to build a railroad and to exercise the power of eminent domain and to take part in interstate commerce. The National Government itself can do it, and if the National Government can construct a railroad, would it be held for a moment that that railroad would be subject to State taxation?

The National Government, under the power to establish post offices and post roads, builds post offices in the States. Do we have to ask the State to exempt them from taxation? No. Years ago it was thought necessary to obtain a special State statute exempting such buildings from State taxation. Now it is the universally recognized doctrine that the public buildings put up by the National Government in a State in the exercise of its governmental functions can not be taxed.

Mr. SPOONER. Will the Senator allow me to ask him a question?

Mr. NEWLANDS. Certainly.

Mr. SPOONER. Aside from the question of law, aside from the question whether Congress has power to exempt such property in the States, does the Senator think the States would ever for a moment submit that railroad property within their borders should not be subject in any degree to local taxation?

Mr. NEWLANDS. No; I do not think they would. It is impossible to get through such a bill, and I would not ask to have it passed. All that I wish to accomplish is to have a uniform rule of taxation that

will make the taxes of railroads a certainty, so that they will keep out of politics upon this subject, and so that we will have a definite factor in the determination of rates.

Mr. SPOONER. Do not the railroads get into politics more on the question of regulating rates than on the question of taxation?

Mr. NEWLANDS. No; I think they are in politics upon both; and they have to be.

Mr. SPOONER. The Senator would leave them in politics as to the one?

Mr. NEWLANDS. Because I can not help it. But still as to that the Senator must recollect that they have the protection of the national courts, which are bound to see to it that no State regulation deprives the company of a fair return upon its property. The courts have modified very much the doctrine asserted in the case of *Munn v. Illinois*, where it was declared that the power to regulate was a legislative power; that it was no objection to the power to say that it would lead to legislative abuse; that the only remedy for legislative abuse was a resort to the polls. That was a poor remedy given to the corporations by that decision, for we know how ill any corporation would fare at the polls in seeking a redress of injuries. But we do know that since that time that doctrine has been seriously modified, and the courts have now taken the property of these corporations within their protection and have given them ample protection. They do not simply protect them against confiscation, but they protect them in a fair and reasonable return upon their property and in a fair and just compensation for the services which they perform.

Mr. President, I have, at the risk of being tedious, gone quite fully into the principles which should, in my judgment, govern the regulation of rates. I believe that it is our duty to provide for a valuation of railroads in interstate commerce and to fix the returns which the corporations are to receive on such valuation. If these two factors are established, the whole system will tend automatically toward a reduction in rates as the business of the railroads increases.

#### AUTOMATIC ADJUSTMENT.

A system of national railway corporations strictly controlled as to capitalization, limited as to their returns to a certain percentage, with taxes mathematically certain, with a proper allowance for an insurance and pension fund, with proper provisions for conciliation of disputes between employees and the railroads, would result in an automatic adjustment that would do away gradually with excessive rates and all the abuses arising from preferences and discriminations as to individuals or localities. The tendency would be to equality and reasonableness of service. If we enter upon a system of proper capitalization of these roads, involving a fair and fixed return in the shape of dividends, the Interstate Commerce Commission will hardly ever have cause to act, and, automatically, the entire administration of these roads will tend toward impartiality in place of partiality, and reasonable rates instead of unreasonable rates, to the betterment of the roads instead of exhausting the roads with a view to paying dividends on watered capital.

## NATIONAL OWNERSHIP.

The people will look for simplicity in whatever plan of relief is proposed, and unless we unify and simplify the control of transportation in a few thoroughly regulated great national corporations, whose finances and operations can be easily understood, and whose functions will be entirely taken out of politics, they will drift into national ownership as the easiest solution.

The argument in favor of national ownership is an attractive one. Outside of the United States three-fifths of the world's trackage is in national ownership, and not a single nation that has entered upon national ownership is inclined to withdraw from it. Japan, only recently coming out of the stress and strain of a great war, has passed an act for the purchase of all private railroads in Japan, at a cost of \$250,000,000.

The plan of acquiring national ownership would not be difficult. It would not involve the entire readjustment of the present system. It would be easy to authorize the Interstate Commerce Commission to institute suit and condemn the shares of stock of all the railroads in the country engaged in interstate commerce, leaving the bonds outstanding as a lien upon the property. Thus the interests of the stockholders would be purchased by the Nation and the Interstate Commerce Commission could step into the position of director of the various corporations, with their present organization of officials and employees, and could gradually work out a method of national administration.

The present gross revenue of all the railroads would be amply sufficient to pay all the fixed charges of the companies and the low rate of interest upon the Government bonds issued for the purchase of stock and produce a surplus which would make ample provision for betterments and extensions, and also provide a sinking fund which would extinguish the debt before many years.

Or, should the country determine to take hold simply of the new construction of the future, leaving the existing railroads in the hands of their present owners, the Government could easily build a railroad of 3,000 miles across the continent from the Atlantic to the Pacific, which would become the spinal column of a great governmental system.

Government ownership presents no difficulties, either constitutional or practical, and the country will certainly drift to it unless the existing abuses of uncontrolled monopoly, of overcapitalization, of accomplished union between the producing and transportation interests of the country, of political control, and of unjust preferences and discriminations are done away with. Even assuming that the Government management may not be economical, the time may come when the people will regard equality of service as of more importance than economy of service. But the plan of national incorporation would give the country the benefits of Government ownership with none of its dangers. It would abolish the evils which have arisen from unrestricted monopoly, automatically bring about a reduction in rates, put the railroads out of politics, and retain the management of the able men whose genius created our present efficient system of transportation. No complaint can be made as to this efficiency; no complaint can be made as to consolidation properly

controlled in its capitalization. No attempt should be made to raid the property of railroad investors. No attempt should be made to destroy or impair the existing values of their securities. Unity of control, simplicity of organization, certainty in valuation of railroad property and in return upon such valuation to the stockholders, certainty in taxes, fair recognition of the dangerous character of the service of the employees, proper provision for insurance against accidents and old age, conciliation of disputes between the carriers and their employees are parts of the full and comprehensive legislation which this subject requires and which would differentiate our legislation from the incomplete and fragmentary legislation in which Congress has thus far indulged regarding interstate transportation.

**MR. ALFRED P. THOM—Resumed.**

The CHAIRMAN. The committee will come to order. Mr. Sims, will you proceed with the witness?

Mr. SIMS. Yes, sir.

Mr. THOM. Before Mr. Sims begins, I made a reference yesterday to a letter I received from Mr. Daniel Willard on the subject referred to in Judge Sims's examination, and with his permission and with the permission of the committee I should like to read into the record an extract from that letter. It relates to the average movement of freight cars, referring to the statement which I made at Atlantic City and which was quoted by Judge Sims yesterday. Mr. Willard proceeds as follows:

You say, "One of the States has a law requiring its freight to be moved forward at a rate of not less than 50 miles a day." The average movement of freight in the United States is 24 miles a day." What you meant to say, I take it, was that the average miles made per day by all freight cars in the United States is 24, which, I am sure you will agree is quite different from saying that the average movement of freight in the United States is 24 miles per day. As a matter of fact, when freight is actually moving, I doubt very much if the average speed is less than 10 miles per hour, and usually when moving, freight cars will go over at least one division of 100 miles per day. In the case of the freight car, however, it must be kept in mind that the total time of the car must be accounted for—that is to say, not only the time while it is actually moving but also during the 48 hours which the shipper is given to load the car and the 48 hours allowed for unloading, and any other delays which may happen to the car during the entire year, due to accident, slack business, etc.

I have taken the liberty of writing you about this matter because I have no doubt you will have occasion frequently to refer to the same subject in your public addresses, and otherwise, and on that account, I thought best to point out the distinction which I think should be drawn between the average movement of freight and the average movement of the freight car.

Mr. SIMS. He is correct; your statement is the average movement of freight in the United States, 24 miles per hour. He is correct in that.

Mr. THOM. Yes, sir.

Mr. SIMS. Which you accept?

Mr. THOM. I accept what?

Mr. SIMS. The statement of Mr. Willard.

Mr. THOM. I am trying to have that whole subject developed by having the statistics checked, and I have not got them in such shape yet as to present it.

Mr. SIMS. When we took a recess yesterday we were on the subject, at least indirectly, of railroad credit, or what would be neces-

sary to be done in order that the railways of the country might receive the necessary new capital at such rates of interest as would enable them to make the required new developments that ought to be made in order to meet what seems to be admitted, both by yourself and everyone else, as absolutely necessary. Or else, failing to do so, the commercial growth of the country will be arrested. Your conclusions are, as have been announced in your former statements, as I understand them, that something must be done to attract private investors sufficient in itself to enable railroad companies to market their securities in competition with all other kinds and characters of investments that will be open to the private investor. Your conclusion, as I understand it, was that if legislation along the lines you have suggested was carried out, that then the stocks and bonds of railroads—in other words, railroad securities—would prove sufficiently attractive to cause private investors, in competition with all other forms of investment offered, to take these securities in such volume as will enable the railroads to do that which they admit is necessary to be done, so that we shall not have a continuous state of arrested commercial development. Now, we were on that point, and I made the suggestion with reference to the Government guaranteeing minimum returns upon these new issues of stocks or bonds, or both, for a sufficient length of time, so as to remove the element of uncertainty that now exists, and in that way, while reducing the rate of interest charged to the public carriers, really making a form of credit investment that will be desirable over all other securities offered not guaranteed by the Government of the United States or some other guaranty of equal solvency and ability.

I, of course, am not a railroad man, and can not go into these things except in a very crude way, but I wanted to ask your opinion as to what you think would be practical, provided that legislation might be passed giving the Interstate Commerce Commission or some other Government authority the power and placing upon it the duty to approve all future issues of either stocks or bonds of railroad companies. Would it be practical, and would it serve the purpose if, after the Government had approved these issues, that it should guarantee that the interest return or dividend return upon this specially authorized stock issue or bond issue should not be less than a fixed amount—say, 4 per cent—giving to the investor the opportunity to receive, if he is a purchaser of stock, any additional dividend that might be earned in the nature of a speculative inducement or in the nature of a bonus, so to speak? That is, if the company makes under Government regulation 6 per cent, which it can devote to dividend on the stock, that it should not be prevented from doing so, provided this Government authority regulating these things did not intercede and prevent it upon the idea that it was not authorized by the conditions of the carrier. The Government not guaranteeing the ultimate value of the stock, but simply the regular payment of a dividend for a certain period of years—20, 30, 40, or 50, or whatever might seem to be practical.

I want to ask you whether or not you think such a system as that might relieve the situation and, at the same time, not involve the Government in any probable or possible ultimate loss, and not remove

the properties of railroads from State control—I mean to the extent of taxation, police regulation, and so on—giving the Government the right to be represented in any meeting of the stockholders of such a company and making it necessary that the Government director, if we should call him such, the Secretary of the Treasury, the Secretary of Commerce, or whoever might be authorized by legislation to act, should approve all arrangements and regulations of that railway company just as though it was a private owner of the stock, to the end that the Government might be protected against a possible loss of this guaranteed dividend.

These are only suggestions, crude thoughts, and I have thrown them out for just what they are worth, to the end that what seems to be undesirable by some people, and at the same time to have behind a railroad's security both a moral and a financial guaranty that would appeal to the investors both at home and abroad over an investment of like character, but without governmental, moral, and financial responsibility. I will ask you, have you given this proposition any thought or have you thought along that line? Have you given it consideration?

Mr. THOM. You present an exceedingly interesting point of view, Judge. In the first place, I would like to call attention to perhaps a little modification that should be made in your statement of my view, so that the record shall not be—

Mr. SIMS. I do not want to misstate it, of course.

Mr. THOM. Of course, I appreciate that. I do not think you will find that I have ever said that even if everything that we have suggested is done, that there will be no need for something further to be done in respect to a constructive system of relationship between the Government and the railroads. I regard what we have proposed as an immense step in the direction of stability. Wonderful progress will be made if we can get those elements of sympathetic cooperation between the Government and the railroads which we have suggested. Now, I have never assumed that we could get everything that was necessary at one effort. I have no doubt it will be a developing situation, in which Congress will have to study it from time to time, as the conditions are presented, and will have to deal with it in a progressive way, but that what has been now proposed will be a tremendous step in that direction.

Undoubtedly a Government guaranty of income will be a most tremendous element in the value of these securities and would very greatly attract investors, but you ask me whether I have given any consideration to that. I have not given consideration to it as a practical matter, for the reason that I never supposed that the Government would make such a guaranty. Now, if that is in the range of possibility, that is a very important thing to be considered. A Government guaranty of income would be a tremendous attraction. For example, take the securities that are going to be issued under this new rural-credits system, which come with the apparent backing of the Government, even free from taxation. Now, it is the general opinion among financial men that when those things are issued they are going to be very attractive, because the Government is behind them in a way. Now, if the Government chooses to get behind the securities of the railroads, of course that is going to be a tremendous factor; but I call attention to the fact, if you will permit me

one moment, that the tendency of the questions which you are asking is to base them upon a recognition of a condition in respect to railroads which is in accord with what I think it is, that there is a present condition calling for decided helpfulness on the part of the Government so as to continue these facilities up to the point that the commerce of the country requires. Your questions are based upon that as a fundamental. I do not mean that you necessarily think that, but you are asking these questions based on that assumption. That is my belief. The only difference between the tendency of your questions and my own judgment is that you are suggesting remedies far beyond anything that I believe to be practicable from a public standpoint. I do not believe the Government is going to do that. I would think that if the Government is ready to do that, the whole subject ought to be reviewed in the light of that willingness on the part of the Government; but I have assumed that we have a condition here which your questions indicate must be met by some real, earnest, serious governmental effort in order to meet the public needs of the future, and even the present, in respect to the facilities which commerce needs.

We feel that as long as these properties are privately owned that the Government will expect us to see that they are kept up to the needs of commerce, provided the Government affords us such encouragement in its regulations, such helpfulness and constructiveness in its system of regulations as will enable us to do it, leaving the responsibility on us to do that, and testing finally the system of private ownership by our success. You can not test the success of the system of private ownership under a system of regulation where only the correction and repression are the main features. You can test a system of private ownership when you have given to the investors in these facilities all the reasonable aid which Government can give, and when you have done that, when you have perfected your system of regulation by introducing in addition to your present powers of correction and punishment the power that the Government may give in the way of helpfulness and encouragement—I mean reasonable and proper helpfulness and encouragement—when that is done and tested, of course, we appreciate that there will be the supreme test of private ownership. We can not have it now, because the system of Government ownership denies it to us anyhow. We will have it then, because the system of private ownership will have been helped by the Government in every reasonable way. Then the question will come up, and on that question will depend the future of this Government. If we break down after having been helped to the extent that Government can reasonably help us in the system of regulation—if we break down—then the commerce of this country is not going to contend with inadequate facilities. When private ownership fails, there will be a demand from everybody that the Government shall take its place, and thereupon we will have whatever that means to our system of government.

One man may think that means one thing, and another another, but we all know that it is an unknown world which we will be entering, to engraft upon a democracy the immense strain of Government ownership of transportation facilities, with its army of employees. We know that that will be a great strain. I do not believe that that

ought to be accepted as a solution, until we find there is no other way out, and therefore I have addressed myself in your presence, earnestly to establish the purpose of creating the conditions that will, I hope and I think, save the system of private ownership of these railroads. I believe that to be in the interest of the public, and of our system of democratic government, infinitely more than it is in the interest of the security holders; and if I may be permitted a personal word, if anything that I can do will tend or help to bring about that result, I will feel that I have not labored in vain.

Now, in connection with another aspect of your question, I wish to introduce at this point an idea that has been suggested to me since these hearings began. As bearing upon the conditions which we will have to confront in respect to getting new money for these railroads, the various matters which I have mentioned in that connection are in the record, and probably are remembered by you gentlemen; but here is a letter from a most distinguished man, a financier, who is at the head of the new governmental banking system of New York. I think he is the governor of the Reserve Bank of New York. I do not know exactly what his title is, but it is Mr. Benjamin Strong, who was formerly president of the Bankers' Trust Co., and is now the head of this new banking system in New York, and he calls attention to an additional matter which the statesmanship of this country has got to confront in dealing with the matter of railroad credit, and that is this: The effect of the European war on interest rates. Now, his view is this: He says in England they are now paying 6 per cent for money that they used to get for less than 2 per cent. France is paying 6 per cent for money it used to get for less than 1 per cent. That, of course, has a tremendous effect upon the level of interest during the war.

The problem that men of affairs have got to deal with, and that the statesmanship of the country has to deal with is: What is going to be the effect on interest rates after the war? Is this 4 per cent you are talking about going to be a legitimate return on money after the war, or will the effect of the immense demand for capital abroad, in reconstructing Europe when peace comes be to make such a demand for money as to greatly increase the rates of interest, and if it will there will be a tremendous competition established with railroad securities, and the amount of interest they will have to pay for new money will be affected greatly by it.

May I read a portion of this letter?

Mr. SIMS. I have no objection, of course.

The CHAIRMAN. Certainly.

Mr. THOM. It is a question we would like to—

Mr. SIMS. I would like the information.

Mr. THOM. It seems to me it would be of some importance. I will read the whole letter. It is written by Mr. Benjamin Strong, from Denver. He is out in Denver and has evidently been out there for some time—to Mr. Trumbull, who is the chairman of this railroad executives advisory committee, written on November 8 [reading]:

DEAR MR. TRUMBULL: Since replying to yours of the 31st, I have been over the various documents you were good enough to send me bearing on the subject of railroad regulation.

Every time I read literature on this subject the difficulties stand out stronger and my own unfamiliarity becomes more apparent. The three sug-

gestions outlining the scope of information desired struck me as being very ably and thoroughly prepared but I am constrained to make one modest suggestion where I believe the subject has not been as extensively developed as it should be.

We all recognize that the war is bound to have an unsettling influence upon rates of interest all over the world for many years to come. The British Government is paying 6 per cent interest for short loans, which a few years ago it had no difficulty in placing at less than 2 per cent. The French Government is paying between 5 per cent and 6 per cent for short loans, which in times of peace it had no difficulty in placing with bankers at times at less than 1 per cent. These developments have had as yet but slight effect upon the level of interest rates in this country because the influences of war conditions here have been quite the reverse of those which are found abroad. When peace lets down the bars and the financial currents begin again to flow normally, what will be the general effect upon interest rates and how will it be felt in this country? I am inclined to agree with Prof. Fisher who believes apparently that the whole world is more likely to face considerably higher rates, rather than with those who believe that relaxation of business activity will bring about lower rates.

As applying to the railroad situation, which is peculiar to itself in that railroads can not readjust their rates to meet economic changes, I would suggest a line of inquiry somewhat as follows:

First. What will be the general effect of the war on interest rates?

Second. Will considerable differences in rate levels abroad and in this country influence further sales of American securities now held in Europe?

Third. Will such difference of rates likewise preclude the possibility of sales of railroad securities in foreign markets in future years?

Fourth. Will the course of interest rates following the war have any effect upon certain special domestic markets for railroad securities such as trust funds, savings banks, insurance companies, etc.?

Fifth. Is the margin of railroad earnings now sufficient to enable railroads to finance by issues of stock when upon the conclusion of the war business slackens, earnings decline, and interest rates advance?

Sixth. The same inquiry should be made as to financing by bond issues.

Seventh. If rates do advance sharply, what will be the situation of those roads which in past years provided for their requirements by large issues of short-term obligations?

Some of these points are already covered in the questions addressed to bankers, etc., and I realize that the above suggestions are no more than the surface of a subject of tremendous importance and uncertainty.

I think the safest guess as to economic conditions after the war ends can be described by stating that the United States will be in competition with all belligerent nations in all markets of the world and in all departments of financial and commercial activity. The conditions of production here will be based at first upon the highest wages ever paid in this country, nominal taxes as compared with Europe, and much lower interest rates at first than will prevail abroad, whereas the belligerent nations will have very cheap labor, a tremendous burden of taxation, and at first considerably higher rates of interest than ours.

If there is one thing which experience demonstrates in this country it is that wages readjust more slowly than any other item in the cost of production. Taxes are fixed and can not be readjusted. The first readjustment and always the promptest to take effect is the value of credit—that is, interest rates.

In presenting the case of the railroads, it will be impossible to avoid dealing with a good many controversial features of the railroad situation. Here is one subject of vital importance to the railroads which can be developed to great advantage without inviting the antagonism of stockholders, wage earners, or shippers. It has nothing to do with the character of the regulation which should be applied to railroads, but it has a great deal to do with the reasonableness of methods applied in regulating their affairs.

You asked me for suggestions, and these are the only things which occur to me that do not seem to be very fully developed by the documents sent me. I hope your hearings at Washington meet with the great success which they deserve.

With warmest regards,

Very sincerely, yours.

The CHAIRMAN. Have you given the signature?

Mr. THOM. Benjamin Strong.

Mr. SIMS. I failed to state, but, necessarily, it should be a part of my statement, that in case the Government should guarantee a minimum dividend on stocks and a minimum interest on bond issues, any railroad company making application for such a guaranty would have to provide that in case there was a loss to the Government, the loss should be a first lien on the properties of the company, so that the Government would not ultimately lose anything. I intended to state that as one of the conditions upon which Government guaranty should be obtained.

Mr. THOM. You can readily see that if every amount—every cent that is paid to a stockholder in current revenue becomes a fixed charge ahead of his rights thereafter, it will be a very serious question with him as to how far he is undermining his ultimate security.

Mr. SIMS. I am not presupposing at all that the application should be compulsory, but that when such railroad companies as might think it would be of economic advantage to them should make this application for a guaranty.

Mr. THOM. Yes.

Mr. SIMS. They could also make application to a Government agency authorized to approve the issues of stocks, without any guaranty condition going with it. You will remember, perhaps, that when we had this question up before the Committee on Interstate and Foreign Commerce of the House—I mean the question of regulating railroad securities by approval of the Interstate Commerce Commission—making it conditional upon their approval—that some very learned gentlemen among others one of the members of the Interstate Commerce Commission, Mr. Meyer, who was a member of the Hadley commission, presented the view that public sentiment would regard the indorsement or approval of a bond issue or an issue of stock by a common carrier as a pledge upon the part of the Government of the United States that it would not deny such a rate to that railroad in the future as would enable it to provide for the payment of reasonable dividends on these securities which it authorized to be issued; and also to be based upon the condition that it would not deprive the railroad of opportunity to carry out any existing obligation by way of paying interest on outstanding securities—reasonable dividends upon its outstanding issues; in other words, it would be in the nature of a moral obligation that the Government would not afterwards reduce the rates so that the railroad company getting the approval of the Government for its issue, which it would have to have under the proposed law, would not be able to pay this authorized rate of interest or dividend on stock issue; which would make the Government practically a guarantor. I have stated it just from memory, and I am not trying to state accurately the views of Mr. Meyer and others who expressed the same views, but that is a thought which they suggested with regard to what would take place in public sentiment.

Now, if the Government of the United States is going to be hampered in the regulation of freight rates by the approval of outstanding securities it would hamper itself in the future, so far as that is concerned, to give anything like substantial rate regulation, at least on the railroads the securities of which it had approved, and

not only to the extent of those approved, but as to all outstanding prior securities, which, of course, is a condition that ought not to be invited and ought not to be encouraged, at least it did not strike me that way. I did not believe it was a legal obligation myself, but these gentlemen regarded it in the nature of a moral guaranty of profitable returns, and that is one of the reasons that led me to think about a specific absolute guaranty of a sufficient income on the railroads' properties, by making it a preferred liability over other outstanding obligations of the railroad company. You have mentioned a difficulty that we have got to meet; that is, that present conditions are impossible of continuance in the successful development of the country. It seems to me, Mr. Thom, that the question is not whether we want or do not want Government ownership; the question is what shall we do, consistent with the demands of the country, that will prevent the necessity of Government ownership? Now, between absolute Government ownership and present conditions, the thought occurred to me of a cooperative affair, by reason of having the Government to approve additional security issues and to guarantee a minimum income upon those issues, leaving the property or the owners of the property the right to pay more than that guaranteed dividend, if the Government, through its proper authorities, approved, and giving the Government the power by way of Government directors to decide whether or not this railroad property, after getting this guaranty, should do this, that, or the other thing. In other words, as a cooperation of a valid and material kind. Now, I do not know myself whether the public would take hold of this at all or not; I do not know what the public is going to approve, but I think we are all agreed that present conditions will not develop the country.

Mr. THOM. Yes; I think we are.

Mr. SIMS. And none of us knows whether the plans that the railroad men have proposed will do it or not, and we do not know whether Government ownership would fully meet all the requirements of the situation or not; but we are up against a situation where we must do something.

Mr. THOM. Undoubtedly.

Mr. SIMS. Now, you made a very interesting argument along the theory that the proper development of our railways was a necessary step in the national defense. Is this country to depend for the proper development of its national defense upon the money markets for private securities, competing with the demands of all the world for a number of years to come? The letter which you have just read points out what will probably be the case; that attractive investments that have not heretofore flooded our markets will flood them. Now, is the national defense of this country to depend upon the ability of privately owned properties to float their securities in competition with the fierce demands made by these abnormal conditions throughout the country and throughout the world, perhaps for an unknown number of years?

Mr. THOM. Now, Judge, we will both admit, I imagine, that it is better, from the standpoint of national defense, to have the National Government establish the standard of efficiency of the railroads, rather than that they should be in a position to be pulled down by 48

States not charged with the duty of national defense—at least that one thing we must agree on—that if there is this duty of national defense (and we all agree that that does exist, and that it does exist in the interest of the States), then that the standard of efficiency and capacity of these carriers must be fixed by the National Government. The difference between your question and any answer I might make is not that, because that is conceded by your question, but it relates to whether or not, after putting upon the Government the duty of establishing this efficient standard that can be done through private ownership at all, or must be done through Government ownership.

Now, my belief is that with the proper system of encouragement to the private owners and assurance to the public of a sympathetic attitude on the part of the Government that this burden can still be borne by the private owner. I may be mistaken about that; I may be taking counsel entirely of my hopes, but at least the suggestion you make is most important. It is entitled to the greatest consideration; but reverting back to what you have just said in respect to the history of the hearings before the Committee on Interstate and Foreign Commerce of the House on the subject, I was not encouraged to hope by what transpired there, or what transpired in the Senate committee, for a Government guaranty. I was aware of the general views which are described as having been presented to your committee, but when I commenced to read the bill which you reported out, and which the Senate had under consideration and reported out, it had in it a provision saying that nothing therein contained should be construed as any guaranty on the part of the Government in any of these matters.

Now, that was your answer, and that did not encourage me to expect a Government guaranty.

Mr. SIMS. Well, that was an amendment to a bill I introduced, which had nothing on that subject in it—

Mr. THOM. I know you did, and I was very much interested in it.

Mr. SIMS. That very proposition was put up to these distinguished gentlemen before our committee, that if the authorized stock issue on its face should say that the Government should not be responsible, they then said that public sentiment and the moral aspect of the case with the public would be such as to practically force the commission to allow rates sufficient for the company that had issued these Government-approved stocks, to pay a reasonable dividend or interest on the stock, regardless of whether that was a part of the law or not; in other words, that the public would afterwards consider it as no part of the law and not be bound by it.

Mr. THOM. Now, as to my own conception of that, I never entertained the idea that a mere governmental approval of a particular issue of stock involves any guaranty on the part of the Government at all.

Mr. SIMS. I am like you. I did not take that view of it, but the Hadley commission did take the view that we should not go further in that direction in connection with stock issues.

Getting down to the point mentioned, the national defense, national defense is not a matter of choice; it is a matter of absolute necessity. Who would think of having our fortifications along the seacoast owned and operated by private interests that depended

upon their ability to get enough money to make sufficient fortifications, in the competitive money markets of the world?

Mr. THOM. Who would think of having their fortifications not controlled by the United States, but controlled by the States in which they were located?

Mr. SIMS. Well, I am not suggesting anything of that sort. I am not responsible for that.

Mr. THOM. But I want to get the two ideas together.

Mr. SIMS. I understand that and am not antagonizing it, but that which ought to be done should not be left to speculative uncertainties. When it comes to whether a man can make money out of private investments, the Government can afford to let him take his risk, but if this Nation is to be defended, and a proper railroad system is a part of it—a part of the national defense—I can not see how the Government can any more afford to neglect its duty in that respect than in the building of forts, arsenals, etc.

Mr. THOM. That is one of the most important suggestions, and the only question is, if the Government can fix such an efficient standard of railroading in times of peace that it can readily be converted into a useful instrument in time of war, that is the problem for you gentlemen to determine.

Mr. SIMS. The ability of the railroad companies to make such further additions to their equipment and such further additional new construction as may be required depends entirely upon the income they get out of investments, and the income depends entirely upon what they may charge the public for the services they may render. The theory of private property, as I get it, is this, that it is not a public utility; that every man has a right, lawfully, to make as much out of his private investment as he can. If a merchant has a capital of \$10,000 and can make \$10,000 profit on his capital in competition with other merchants, he is rather commended for it, provided it is in an open, high-minded way in competition with other merchants without any advantage. Therefore, the theory of private enterprise is that the private owner should not be unduly hampered; that he should be encouraged by having an open field. On the other hand, public utilities, such as the life of a nation or city or county depends on, brings us to a situation where it is not a question of how much money the owners of these utilities can make out of them, but how much service the public can get out of the utility with the least expenditure. Is not that practically the dividing line between them?

Mr. THOM. I am afraid you have invited a deluge. I am afraid you will have to wait a little while.

Mr. SIMS. I will finish my question. The question which I wanted to follow is this: If the development of the railroads in the future depends upon making the investments in railroads as desirable to the private investor as any other private enterprise, how can we know what the future earnings of the railroads will be, what future expenses will be, and how is it possible for them to get money in such volume as would enable them to make the necessary improvements, and at the same time give the service to the public at the least possible charge for rendering the service, in competition with the entire field of private enterprise—the entire field of private, unrestricted, unregulated investment?

Mr. THOM. I beg your pardon, Judge, I did not quite catch your question.

Mr. SIMS. I will repeat it.

Mr. THOM. No; let the stenographer read it.

(The stenographer thereupon repeated the question asked by Mr. Sims.)

Mr. THOM. I believe you have got to place safety in investment. instead of hope in investment, when you come to railroads. Of course, there are two great classes of investing public. One is the class that asks for safe investments, and that class accepts a lower return in order to obtain safety. The other class of the investing public is the class that is willing to accept risk in order to obtain higher returns. Now, the railroads of this country were built by the second of those classes, by the class that was willing to accept the risks in the hope of large returns.

The time has come when the large returns can not be hoped for and your whole system of regulation has got to be to give to the conservative class of investors, the one who wants safety, such attractions of safety as will bring their money into this industry. I believe it is possible for you to do that. I believe that with a governmental attitude of support for all the legitimate interests of these carriers that you will so far make an appeal to the investing public, allowing them safety, that you will get such money as you need. At least, I think it worthy of the trial before you go into this tremendous revolution of taking over these properties by the Government and supporting them, perhaps, from general taxation, because Government ownership will not be as efficient in making net returns as private ownership, and putting a strain upon your system of Government which may make it an absolutism instead of a democracy.

Now, I can not give you any assurance—nor can any person—looking into the future, as to what will happen in an issue as great as this. Men may speculate about it and have differing views, but we know something now is happening to the public. We know something is happening now in the way of absolutely menacing the commercial opportunities of the public. They are not properly safeguarded in the matter of transportation. Now, we come together—I am not speaking now of you and me, but the common judgment of the American public—we have come together to deliberate on ways and means of meeting that situation. One way is certain to meet that situation, and that is the Government can come and say that it will take these properties over and that it will guarantee to the public their commercial opportunities.

Mr. SIMS. That is an absolute certainty.

Mr. THOM. That is certain. Now, the consequence of that, however, is that many men of ordinary type quail at the thought of what may happen. Some men may be brave enough to jump into an unknown future, without qualm, but I misread the American public if they are ready to do that with the railroads just yet. They may be driven to it, but the propelling forces have not been evolved to bring them to that point. That is what I think.

Now, what other thing can we consider? The next thing for us to consider is whether or not there is anything which can be done to make more successful the present system of private ownership, accepting fully the principle of governmental regulation, accepting the

policy that the Government has a right to protect the public in this essential—now, what can be done to strengthen that? We think that is a fair subject for consideration, a fair subject for effort and a fair subject, if you will say so, for experiment. I do not know what you would call it. It certainly is a fair thing to be tried, because of the tremendous consequences of any other step. We must remember that your action here is not final; you will stand again vigilant on the lookout for what the public interests will require from time to time. If what you do now is a mere advance, a mere evolution of what you did in 1887, it will be no more final than what you did in 1887, but, in evolving a final policy of wisdom for this country, you will have the benefit of all these efforts to meet the situation, and you will have that before you come to the ultimate decision of the enormous question of a thing that may and, in the opinion of many of us, will seriously alter our system of government. I think that we are here to discuss merely the question of what is wise to do in the step that all of us admit must be taken.

Mr. SIMS. Is it wise to undertake to do that which you have not a reasonable probability of being able to do?

Mr. THOM. Undoubtedly not.

Mr. SIMS. Then, the approach of the railroads to do and what the public require they should do depends on their future credit as outlined by yourself and as admitted by all?

Mr. THOM. Yes, sir.

Mr. SIMS. Your present position makes this credit depend on things that are hereafter to happen—the railroads must have increased net earnings, either by reducing expenses or by increasing freight rates, increasing the pay they receive, or reducing their operating expenses. Now, Mr. Thom, is it possible for you or me or anybody to know anything certain as to what the operating expenses of a railroad will be in the next 20 or 30 years?

Mr. THOM. It is not possible. We can only guide ourselves in that as we guide ourselves in everything we do, by the best light we have and try to draw some lessons from the past. I think that we can form a reasonably good idea, enough to justify an effort to strengthen the present system before abandoning it.

Mr. SIMS. And your whole object and purpose, then, is to make at least one more experiment to avoid public ownership of the railroads of the country?

Mr. THOM. Well, I do not know whether you would say that is my whole object. My view is that would be the wise thing to do.

Mr. SIMS. That it would be better to do it than not?

Mr. THOM. Yes, sir.

Mr. SIMS. Mr. Thom, is it possible for you or this Congress, or anybody else, to know what the labor costs of this service is going to be 5 years from now or 10 years from now?

Mr. THOM. I have just said it is not possible. We can only form some judgment of it just as we could of any other affair of the future.

Mr. SIMS. There is only one power in this Government by which all these conditions may be reasonably controlled and that is the sovereignty of the Government itself?

Mr. THOM. By the Congress of the United States.

Mr. SIMS. Yes; and depending not upon private agency, but upon public agency. As a matter of principle, Mr. Thom, is there any

difference in the Government requiring a railroad now existing, a private instrumentality, to carry 50 pounds of ordinary freight 150 miles at a certain price, than to require the railroad to carry 50 tons of the same class of freight the same distance?

Mr. THOM. The principle is the same.

Mr. SIMS. It is said by the Supreme Court, I believe, or at least upon about as good authority as the Supreme Court, that "The power to tax is the power to destroy"?

Mr. THOM. But right here I want to register my dissent from the parallel of a charge for a freight service or a passenger service through the power to tax.

Mr. SIMS. I am not assuming that myself.

Mr. THOM. The power to tax is a power of superior authority to take a toll from those subject to its jurisdiction to carry on a public work. It has no element of being payment for a specific service, whereas the charge of a railroad for carrying a passenger 100 miles, or carrying a ton of freight 100 miles, is simply the power to be reasonably paid for the services performed.

Mr. SIMS. The right to be reasonably paid?

Mr. THOM. Yes; the right to be reasonable paid for the services performed. It is no more a tax on the man who travels 100 miles, or whose ton of freight is carried 100 miles, than my bread man imposes on me when he comes and leaves his loaf of bread at my house and gets his 10 cents for it.

Mr. SIMS. I am not controverting one word you say, and I did not contemplate doing so.

Mr. THOM. I was not answering you; I was answering this talk I hear everywhere, that the power to charge a freight or passenger rate is the power to tax. It is a power simply to be paid; it is a right simply to be paid for a service which is never overpaid.

Mr. SIMS. What I was leading up to, and the only reason I used that expression, "the power to tax is the power to destroy," is not the power, the unlimited power, of the Government to regulate private control and ownership of property the power to destroy it commercially?

Mr. THOM. If there was not any Constitution.

Mr. SIMS. Oh, we can not be confiscatory, but when you destroy the earning power of property have you not virtually and commercially destroyed the property itself?

Mr. THOM. Undoubtedly.

Mr. SIMS. If the Government has the right to say to a railroad you shall carry freight put up in a certain way of a certain class a certain number of miles for a certain compensation, is not that absolutely uncontrolled exercise of an arbitrary power?

Mr. THOM. No, sir; the Government has no right to say they can do that on any terms that are not reasonable. Any terms imposed that are not reasonable are confiscatory.

Mr. SIMS. I do not assume that the Government shall say it shall carry this at a loss to itself. Now, then, as to what reasonable profit is, as to what the reasonable per cent which should go to the carriers, that is a question, of course, that is the hardest matter in the world on which to find two experts in agreement.

Mr. THOM. Right there I have a thought in my own mind which I want to get in this record. I think a great many of our diffi-

culties have come from the adoption by the Supreme Court of the United States of an erroneous idea in respect to the fixing of rates. I do not mean that it has adopted that view to which I allude finally or exclusively, because sometimes a case comes which is decided one way and sometimes a case comes that is decided another way, and there are two views that they have accepted—two views which are, to my mind, absolutely destructive of each other. One of those views is that the question of confiscation must be determined by whether or not there is a reasonable return on the value of property. The other of those views is that the reasonableness of a rate must be determined by the relation that the rate bears to the service. Now, I believe the latter one is the correct view, and I believe if we had had it started at that point that we never would have had any of this trouble. I believe, in other words, it is the rate paid on a specific service which the railroad gets for that service, and that the public is not interested at all in the question of return, except as it is interested in the question of facilities. Now, this view was first presented—I can not say first presented, but was very strikingly presented—by Justice Brewer, of the Supreme Court, in the case of *Cotting v. Kansas City Stock Yards* (183 U. S., p. 95). There the question came up of what was a reasonable rate in the quasi public business of the stockyards, and with your permission I will read to you from that case, which will indicate the line of view which I wish to present:

Pursuing this thought, we add that the States' regulation of his charges—

He is now referring to the stockyards' charges—

is not to be measured by the aggregate of his profits, determined by the volume of business, but by the question whether or not any particular charge to an individual dealing with him is, considering the service rendered, an unreasonable exaction. In other words, if he has 1,000 transactions a day and his charges in each are but a reasonable compensation for the benefit received by the parties dealing with him, such charges do not become unreasonable, because by reason of the multitude the aggregate of his profits is large. The question is not how much he makes out of his volume of business, but whether in each particular transaction the charge is an unreasonable exaction for the service rendered. He has a right to do business; he has a right to charge for each separate service that which is reasonable compensation therefor, and the legislation may not deny him such reasonable compensation and may not interfere simply because out of the multitude of his transactions the amount of his profits is large. Such was the rule of the common law even in respect to those engaged in the quasi public service independent of legislative action. In that action to recover for an excessive charge prior to all legislative action, whoever knew of an inquiry as to the amount of the total profits of the party making the charge? Was not the inquiry always limited to the particular charge, and whether that charge was an unreasonable exaction for the services rendered?

Mr. SIMS. That is the view you indorse, as I understand you?

Mr. THOM. That view I indorse. Now, I want to say here we are met with the necessity, under some decision, of trying to find out whether the rates are reasonable by reference to the value of the property, whether or not the return—in other words, the effort is made to first determine the value of the property, and from that to determine the earning capacity of the property. Is there any other property on earth where that is done? You have a warehouse on the corner of Twelfth and F Streets, in the city of Washington, and you have another one over here in Anacostia, and they

cost exactly the same. Now, the one on F Street rents for five times what the one over in Anacostia does. Do you find the value of that F Street house by the cost of it? Do you find the value of the unrentable one in Anacostia by the cost of it? What you do universally in trying to find the value of a property used for commercial purposes is to first find the income from it and then to ascertain the value from that.

If you want to buy it you can go to your real estate man, and you would ask him, first, "What income can I expect from this property," and you would give him not the amount that the property cost, but you would give him what you considered to be the fair valuation of the income you are going to get out of it. Now, if that is so, how counter to everything that is recognized as a commercial and economic law are such transactions as we are undergoing, when we are trying to find the value of the railroad and then from that to deduce its earning capacity.

Mr. SIMS. I did not know my question had involved any such consideration.

Mr. THOM. I ask you to give me an opportunity at this point to get this idea into the record, Judge. I have got a broader view than the mere question, and if it is not unpleasant to you, I would like to indulge in it.

Mr. SIMS. Not at all to me; glad to hear it.

Mr. THOM. Now, we have two railroads, one that runs from the city of New York, through Philadelphia to Pittsburgh; another one built along the crest of the Rocky Mountains, or is built out from the keys of Florida, toward Cuba, over the water. The cost of those two roads may be exactly the same, or it may be more in the Rocky Mountains or over the water toward Cuba—may be vastly more—but the value of them is entirely different. The value depends upon the neighborhood business; the location of the public for handling business; and when we put ourselves upon the plane of reversing that economic law, we introduce the very situation which has given us all of this trouble to-day.

We are first trying to find values and then to restrict earnings to them. Instead of that, the duty of government is completely done when you safeguard every transaction that one of the public has with the carrier, and see that that is done at a reasonable rate; and if he has got a million of them instead of a hundred of them every day that is the advantage that he has, and you have exhausted the whole power of government when you safeguard each individual transaction. Now, that has been held—there is one line of decisions of the Supreme Court of the United States which goes on that view. Take the case in One hundred and forty-eight United States, where the Government wanted to acquire a dam in the Monongahela River, and the Congress of the United States said that given the power of condemnation, you must not take into consideration the franchise clause; take the physical property. You must not take any franchise. That case went to the Supreme Court of the United States, and there the Supreme Court of the United States said, "This is not brick—the brick and mortar of this dam is not the value these people have." They have got a right to use that—got a right to make money out of it—and we have got to find the value of the dam—lock,

I should say. I said dam; I meant the lock. We have got to find the value of that lock, not by reference to what it cost but by reference to what it can legitimately earn. So there is one line of decisions going that way. Now, here comes another one which says that the proper standard of judging whether or not a particular rate is or is not confiscatory, is return on the whole property. Now, when we do that, when we accept that second one, we get to the condition where we limit the reasonable and legitimate earning capacity of a road, on transactions each one of which are reasonable. I consider that when I own a railroad—which I wish I did, sometimes; then, again, when I think of the future I wish I did not.

If I owned a railroad my property right justifies me in making out of that railroad every bit of profit I can make if every one of my transactions is at a reasonable rate. If that were adopted as a principle, then we would not have this trouble here, because all we would have to do would be to let the railroads fix a reasonable rate, and let them earn what they could without oppression to the public in any special transaction, and there would not be this limitation you speak of upon them. Now, the difficulty in that is to fix what is each individual's rate. But the United States Supreme Court, in the North Dakota Coal case and in the Western Passenger case, have undertaken to say that that is the proper standard. Now, the difficulty of establishment is the difficulty of regulation. It does not affect the substantial constitutional rights, and at the proper time I have got a little article on that subject that I may ask to be put in the record, but I want to say now that I believe that that is the fundamental difficulty in our railroad situation, that we have adopted a false principle of determining what these railroads may legitimately do.

Mr. SIMS. Does any of the legislation you propose cover that particular phase of it?

Mr. THOM. It does not, because I consider myself "a voice crying in the wilderness" on that subject.

Mr. SIMS. Are the decisions you refer to by the Supreme Court of the United States the latest decisions on the subject? They are the latest decisions of the court on this question?

Mr. THOM. There are more, of course, I have not referred to.

Mr. SIMS. The one that you did refer to.

Mr. THOM. They are very late. Then, there is also a very late one, and that is the Minnesota Rate case, which takes the other view.

Mr. SIMS. It is the law, as interpreted by the Supreme Court at this time, that a rate is not confiscatory if, from all the earnings of the railroad, a reasonable profit is made upon the fair value of the property?

Mr. THOM. That is a view which unfortunately they have taken. They are very wise men. You see that that just simply means this, that if five rates were too high and five rates were too low, and the average is right, that that means simply that when the rates that are too low are attacked, the man can reply, "You have got another one here that is too high, and your average is right, and you can put the burden which you have on me or some other man."

Mr. SIMS. Now, upon your theory, of what ought to be the law, or what ought to be the decision of the Supreme Court, but what is not, is that a public-service corporation, like a railroad company, should

have the same right an individual does to have a profit on each separate unit of service performed?

MR. THOM. I do not think it is a question of profit on each one. I think it is a question of a reasonable rate on each one. It may be a profit or may not. I may so extravagantly operate the railroad that I get no profit on anything. I may so extravagantly build it that I get no profit on anything. I must be content, however, when I go into that business to get a reasonable return for each charge by comparison with other charges.

MR. SIMS. For each service?

MR. THOM. For each service, by comparison with other services, and if I make no money out of it that is my fault and my misfortune. If I do make money out of a reasonable charge, it is to the advantage of my business to which I am entitled.

MR. SIMS. But your conclusion necessarily involves in the definition of a reasonable charge something more than money out of pocket, does it not, in the performance of service?

MR. THOM. I do not think it does. I do not think you have got a right to simply say that I can put up my cost by bad management and have a profit on that transaction. I think you have got a right to do this: I come to you, Judge, and I employ you as a lawyer and you go into court for me and attend to my case, and we do not say a word about what I shall pay you. Then when you get through you present me a bill. Now, your bill has got to be what you and I call—what lawyers call a quantum meruit. It has got to be a reasonable charge for that service. Now, nobody on earth can say that there is any absolute test of what that is, but the common judgment does fix something that is reasonable for an unagreed service. And this court goes on to state how those things are to be determined; Justice Brewer talks about how that is to be determined.

MR. SIMS. I do not mean that you will claim you are entitled to a profit on a service that you have wastefully and extravagantly performed. I mean, of course, that the service has been done as economically as a good service could be rendered under the circumstances, but your theory is and your holding is that when that is complied with, in substance, that then a public-service corporation is entitled to have a return—in order to be a reasonable return, something in addition to the cost of performing the service?

MR. THOM. Judge, it is impossible to determine what the cost is of any particular service. You can not determine that. You have got to approach the question of a reasonable charge from a different angle. You have got to judge a great many economic and commercial conditions, and determine what is reasonable under the circumstances.

MR. SIMS. In other words, it is a complex problem.

MR. THOM. It is very. There is my difficulty. If I could point a way that was certain and simple to determine what was a reasonable charge for each service, I would have no difficulty in getting it accepted, but the very difficulty of doing that, which I claim does not change the constitutional principle—the very difficulty of doing that has driven the mind of the public into the other conclusion of putting upon railroad property a limitation in respect to its value, that absolutely does not apply to any other class of property in the country. You first in railroad property determine your value, and

from that you determine the reasonableness of your revenue; whereas, in every other class of business you first say how much this property can legitimately earn and from that determine what the value of it is.

Mr. SIMS. We are getting very far afield on this rate-making problem, and I think we will never get to any end.

Mr. THOM. We are, indeed.

The CHAIRMAN. I would suggest, Mr. Thom, that while your discussion of this subject is very interesting, it is likely to take us far afield.

Mr. THOM. It is.

Mr. SIMS. But what is germane, as I understand, is what can the railroads do in the future that the public can endure and prosper; that commerce may expand and that the railroads may make such additional improvements as is necessary, in order for them to meet the expanding requirements of commerce, when your whole dependence for credit to enable you to perform this service depends upon a competitive field for credit securities, worldwide, and depending upon the conditions that this Congress can not prescribe.

Mr. THOM. Now, you have got in your system of regulation to introduce the attraction that will enable the railroads to go into that competitive field and succeed.

Mr. SIMS. Then, that involves increased earnings to the railroads over present conditions?

Mr. THOM. It involves an assurance of increased earnings.

Mr. SIMS. An assurance of increased earnings.

Mr. THOM. Now, of course, the reason I am guarded in that way is because at the present time we are in what we think an abnormal condition. We have got a standard of earnings created by a war condition, but in a little while that will be all gone. Now, what are we to do to meet that changed condition? My judgment is we have got to have a system of regulation that will be sensitive to those changed conditions and will respond as to those changed conditions.

Mr. SIMS. You admit that rate making is at present under the law, as decided by the Supreme Court, a very complex and unsatisfactory condition?

Mr. THOM. I do.

Mr. SIMS. And it being that way, how is it possible for you or this committee to know what the rates made in the future will bring, in the way of net returns, to the railroads?

Mr. THOM. I do not think it necessary; the committee can not know it, and I do not think this committee is called to pass on it. The committee's entire duty is performed when it perfects a system of administration which it creates that will deal in the most sensible and fair way with that problem. Now, my whole plea is for perfection of a method. I do not ask you to determine the question here of how much revenue these roads are entitled to, or increase, or to do anything of that sort. My plea to you is for perfecting a method of dealing with that situation as it arises.

Mr. SIMS. You say there, Mr. Thom—it may be that I have overlooked it or I am not capable of discerning it—the propositions you have made do not seem to me to eliminate the wastefulness of competition at competitive points of the present systems of the railroads. Now, you speak in high terms, no doubt correctly, about

the condition of the country served by the consolidation of the 149 railroads now composing the Pennsylvania system; also the consolidation of numerous roads now composing the Southern system, and that these systems are built up in that way all over the country, but as systems they have competitive points and a competitive service to render in which it seems to me that the competitive methods adopted are absolutely wasteful.

Now, your propositions which you put forth, if I have understood you correctly, do not provide for the elimination of wasteful competition practiced between the several systems. and when you get your regions established, which extra members of the commission are to look over, if 149 railroads combined in 1 better serve the country they cover than a lesser combination, and if your national incorporation is intended to force all of these railroads to take out national charters and then make your working arrangements or combinations afterwards, for the life of me I can not see, if a railroad company owning and operating 149 railroads, with great benefit to the country and to the stockholders—I can not see why that same identical railroad should not own every railroad in the United States and should not operate them all with reference to the public interest, and not simply to a section served by it.

Mr. THOM. Now, Judge, the difficulty about that is that you are up against the fact that you do not. How are they to acquire all these other railroads? You have to deal with the situation as it is. You are trying to improve that situation as it is by making improvements. Now, you complain of certain private practices that are wasteful. Don't you imagine that these responsible railroad men, who find their limitations of initiative narrowed by having no control to speak of over their revenues and expenses, are giving this matter great thought? These men are studying every day how they can eliminate competition and other wastes. If you do not believe that they are doing so, I should like for you to come and sit in one of their offices and see how earnestly they are giving attention to that very matter.

Mr. SIMS. I have no doubt of it, but that does not remove the fact that now stares us in the face, that here we have two railroads in sight of each other all the way, paralleling each other, from here to the city of Philadelphia, and from there to the city of New York, doing an immense business, with double terminals, double bridges, double rights of way, and double expenses all along. Is not that an economic folly, to continue that kind of thing through all time to come?

Mr. THOM. Let us see. In the first place, let me call attention to the fact that that is a situation that now exists, and we have to deal with it, whether it is good or bad. Now, as to the future, our proposal is that there shall not be any more railroad construction of a mere competitive nature, unless approved by the Interstate Commerce Commission. There has to be a certificate of public necessity for the construction of railroads under the view we hope to present; that before a railroad can be built that must be done.

Now, in Germany they have adopted an entirely different theory from America. Here, in America, we have had the idea up to now that the wise policy is to get just as many competitive railroads as we can, and there are prohibitions in some constitutions to prevent

the refusal of charters to competitive railroads, or something of that sort. Now, in Germany they have a governmental principle that will not let a railroad be paralleled within a certain distance, because they think it better to have one good railroad than two poor ones, dividing the business.

A VOICE. But they own the railroads.

Mr. THOM. Yes; they own the railroads. That may be a wise policy, but we have grown up in a haphazard manner in this country with respect to our railroads. We can not undo what has been done. You and I may think we have an unnecessary railroad, but it is there. What are we to do with that? We have to deal with that as an existing fact. We can safeguard the future, but we can not change the past without most hurtful consequences.

Now, you speak of these two railroads. I am not acquainted with those situations any more than you are, but I will say this—this occurs to me—that there is the Baltimore & Ohio that serves a vastly different public from the Pennsylvania Railroad.

Mr. SIMS. Between here and Philadelphia and New York?

Mr. THOM. No; at other points.

Mr. SIMS. That is what I am talking about.

Mr. THOM. Is it to the interest of the vast public that the Baltimore & Ohio serves and the Pennsylvania does not serve to get directly into the markets of Philadelphia and New York; are we justified in considering merely the distance between Washington and New York in considering this problem, or must we go out to the whole section of Pennsylvania that the Baltimore & Ohio serves to determine whether that vast public has an interest in getting directly over the same railroad into those markets? Now, there may be a difference of opinion about that, but those are the things that the men who built the road determined in favor of when they built the roads, and my proposition is that you and I can not go and tear up those roads. They have got to continue. We have got to deal with a situation, good or bad, such as has been created.

Mr. SIMS. Is it not economically sound to double-track a road rather than build two separate railroads, having separate terminals and separate bridges, etc.?

Mr. THOM. If a double track will serve the same community.

Mr. SIMS. I mean the same community.

Mr. THOM. Undoubtedly.

Mr. SIMS. We want to guard against such things in the future.

Mr. THOM. Yes, sir; and the proposition we have presented to you is one we would present as a means of carrying out that very idea. In other words, when there is a possibility, under the Federal law of incorporation, to incorporate a new railroad there must be, in our judgment, an application made to the Interstate Commerce Commission for a certificate of necessity—public necessity—and the Interstate Commerce Commission must pass upon that question favorably before a charter can be issued.

Mr. SIMS. Now, then, Mr. Thom, seriously, do you think the American public will ever agree to vest in the hands of a single board the question of whether they shall have or shall not have one railroad or two railroads?

Mr. THOM. But that must be determined by somebody.

Mr. SIMS. Yes, sir; that is a practical question.

Mr. THOM. Who will determine it? We supposed the creature of Congress would determine it.

Mr. SIMS. Would the great, imperial State of Texas ever agree to a situation where her domain, which is larger than Germany, should depend on a board sitting in Washington as to whether a railroad should or should not be built there?

Mr. THOM. Why should it not? Does not that board represent Texas? Is there any doubt that if there is any semblance of necessity that the commission will be more responsive to the sentiment in Texas than to the railroads?

Mr. SIMS. I am supposing this to be a competitive railroad, to be privately owned.

Mr. THOM. I am, too. But ought not anybody, no matter where he is, feel perfectly safe in filing with the Interstate Commerce Commission, the independent body that represents every interest in this Union, that it will not prevent the building of a railroad except it is a mere frivolous pretext to break down some other?

Mr. SIMS. I assume that it would be very safe to rely on.

Mr. THOM. And that the empire State of Texas would have just as many railroads as they could get anybody to build, where there was a reasonable excuse for the building of them?

Mr. SIMS. The State of Texas has the right, as a State, to build railroads there itself, in Texas.

Mr. THOM. Undoubtedly. They could build their own railroads if they wanted to.

Mr. SIMS. But you do admit, under private ownership, there has been an unnecessary and wasteful expenditure of capital by building excessive railroad facilities unnecessarily, and more than was needed in some sections of the country, to the deprivation of other sections of the country, not having what they actually do need, because the investors have to make an earning on the investments as they are?

Mr. THOM. You say I admit that. I do not know that I have admitted that. I do not think my study of the situation—this particular situation—would justify me in admitting that. I have admitted the possibility of that. I do not know myself where there is an excessive railroad built in this country.

Mr. SIMS. You do not think we need two from here to Baltimore?

Mr. THOM. I think so.

Mr. SIMS. What is the reason the same railroad could not have six or eight tracks or a dozen and still be cheaper than two separately operated entities?

Mr. THOM. We have considered that question. Here is a situation of this sort. There is the Baltimore & Ohio Railroad, running from the city of Baltimore to the West. It ran long before the Pennsylvania Railroad came through Baltimore. Now, was it not to the public interest that the Pennsylvania system should also come to Washington?

Mr. SIMS. Oh, as a matter of course, I am not questioning the advisability of doing what was then done.

Mr. THOM. It looks like the public was benefited.

Mr. SIMS. But the public is compelled to stand a rate for all time, to cover services which would not cost so high if this railroad building had been done economically.

Mr. THOM. Do you know, Judge, that it costs less to come from Baltimore to here than it does to take a taxicab from here uptown? I do not think—

Mr. SIMS. That is so, but I do not think that makes any difference.

Mr. THOM. I do not think the cost is excessive.

Mr. SIMS. The public has a right to have that service performed at the lowest cost of performing the service. Now, the only reason why private companies are tolerated at all, as I understand it, to perform a governmental function, is that they will perform it and make a profit, and upon the whole give the service cheaper than the Government would give it if it was performing the service itself—as cheap and as efficient—some contend much more efficient. But is not that an implied necessary condition or assumption that when a private individual or a corporation does for the public that which it can do for itself, that it must be done beneficially to the public, and at the same time, if they can make an earning or profit, well and good?

Mr. THOM. They must do it on terms beneficial to the public, undoubtedly, but you must take the whole field, as to what is beneficial to the public, and that is not determined by simply the scale of rates.

Mr. SIMS. Now, Mr. Thom, is it not sound to say that unless private ownership, as a principle and as a policy, can serve the whole country as efficiently and as cheaply as the country can serve itself through its own facilities, that it is not entitled to perform that service?

Mr. THOM. No, sir; I think there may be other considerations that may control the matter of whether it should be private or governmental ownership.

Mr. SIMS. Then you do not think that the Government has the right to supply its own facilities for its own purposes; for the public interest, to serve the public interest in any such way as will give the public the greatest amount of service at the lowest amount of expenditure?

Mr. THOM. I do believe in its right, but the question is as to the wisdom of exercising it. I admit it has a perfect right to do it.

Mr. SIMS. Are we going to assume that the Government of the United States is not as able and as willing to do for its people what the Government of any other country has done or is doing for its people?

Mr. THOM. I do not know, Judge, what you are going to assume on that subject. I think there is a vast difference, speaking personally, as to what we ought to assume in regard to one form of government and what we ought to assume in regard to another form of government. I think that there are certain forms of government where the principle of liberty is made dominant over the theory of efficiency. I think there are other forms of government where the principle of efficiency is made dominant over the principle of individual liberty. What one of those governments may do in a great matter affecting an efficient form of government, and what the other form of government may do may rest upon very different principles, and the success of it must be measured by the different governmental systems which authorize it.

Mr. SIMS. Do you think that the individual liberty of any citizen has ever been affected by the Government function of performing

the entire transportation service carried on by the Post Office Department?

Mr. THOM. I think, Judge, that, of course, there has not been, but when you extend that principle to the ownership of every railroad in the country, and increase your army of governmental employees to the extent you will, and put upon the officers of the Government the responsibility for this transportation system, that you will be dealing with a very different problem than any which any democracy ever dealt with before. Now, as I have said to you, time and sufficient experiments may prove that that is the only way we have got. speaking for myself alone—I do not think the time has come for us to accept that as a final proposition. I believe that some other way of dealing with this immense problem exists than the way suggested by your question.

Mr. SIMS. But the some other way would naturally include that which is to the best interests of the country, taken as a whole?

Mr. THOM. Undoubtedly.

Mr. SIMS. And should develop every part of the country instead of sections only?

Mr. THOM. Undoubtedly.

Mr. SIMS. Now, if private enterprise, through the earnings of the railroads and under the complex control that now exists, can not secure the necessary funds with which to perform this service and to give to the people of this country that which their own Government, you admit, can give, are we going to be hampered forever and never have a complete and perfect transportation system in this country, in order to leave the whole matter subject to the control of private interests, private employees or private employers—

Mr. THOM. You ought not. The minute that private ownership breaks down the Government ought to step in.

Mr. SIMS. Has it not broken down?

Mr. THOM. I do not think it has finally broken down.

Mr. SIMS. You think it is breaking?

Mr. THOM. I think, unless you improve conditions, it will break down.

Mr. SIMS. Now, then, you can not promise us anything more than the mere further experimenting with private ownership?

Mr. THOM. I think, so far as I am concerned, my judgment would be we could succeed with proper help from the Government.

Mr. SIMS. As I understand you, as representing practically all the railroad properties in the country, they are not ready to sell their holdings for a fair valuation?

Mr. THOM. We have never discussed that. I did not come to speak for them on that subject.

Mr. SIMS. I understood you to say that some of the railroad people were in favor of Government ownership.

Mr. THOM. Some railroad people take this view—

Mr. SIMS. And that a majority was opposed.

Mr. THOM. Some take this view, that with an inability to control their revenues and with the demonstrated inability of controlling their expenses, there is nothing left but for them to take some money and have the governmental agencies manage them. Some of them are pessimistic and some are hopeful. The majority are hopeful and expect proper results from improved regulations.

Mr. SIMS. And so they are not willing to sell their property for a fair valuation?

Mr. THOM. I do not know that I can say that. If you come around and offer a fair value I expect you will find more willing to give it to you than you think. But I do not know; you are asking me to discuss a question now which I have not discussed with them. You, of course, realize that if I have not discussed the particular phase of the matter that you are now alluding to that I can not speak as to their views, but I say generally that I have discussed it enough to know that some of them feel differently about public ownership than others. Some feel very pessimistic; others feel less so.

Mr. SIMS. But in view of the fact that your argument, and I am not contending that your argument is not a correct one, that the position taken by these railroad companies whom you represent is that without the legislation proposed, or something that will do equally as well, that Government ownership is inevitable. Now, then, it is strange to me that these companies do not contemplate that which they think may arise at a reasonably early day, because they do not know, I do not know, and you do not know what will be the result of passing every law that you are asking for. If everyone was passed just as you have suggested them, you do not know, and I do not know, and nobody else knows what the effect on the railroads will be for the future, as to whether or not investments in those roads will be so attractive as to compete with all other markets for capital. Therefore, not knowing, and you can not possibly know that it will be a success, your next step must come—Government ownership. Why should not these lines, these owners of these properties, contemplate that contingency?

Mr. THOM. I have not said they did not contemplate it. I say on that subject that I am not entitled to express a view.

Mr. SIMS. You mean you are not authorized to express a view?

Mr. THOM. Not only am I not authorized to express a view, but I am not acquainted with the views of these managers; but they are in this attitude of mind: Here they have become committed to vast expenditures in the way of furnishing facilities to the public. They have assumed vast responsibilities in respect to the public service. They believe that the time has come for their hands to be upheld by sympathetic and helpful public regulations in order that they may adequately perform their duties; and they expect, under perfect regulations, to be able to do that. Now, when the time comes that all these apprehensions that you are talking about are realized, then your power remains as it is now in respect to any further change.

Mr. SIMS. But if the Government is going to undertake the experiment of Government ownership, why defer the evil day, if it should be so denominated?

Mr. THOM. If you so determine. We do not think the time has come. That is one thing you are to determine.

Mr. SIMS. Speaking for myself individually and not pretending to bind anybody but myself, I think that with the potential control to the extent that it is lawful and has been and can be exercised by the several States, with the potential control that has been exercised by the Congress of the United States, that the successful operation of the transportation business of this country is as impossible as

would be the conducting of the post-office business of this country under similar conditions.

Mr. THOM. You do not think it is possible?

Mr. SIMS. Not possible in the sense of being the best that can be done.

Mr. THOM. I will agree with you that it is not. Now we bring before you our best thought as to how to meet that situation. Of course we will be immensely benefited and the public will be immensely benefited by any suggestion of a better course.

Mr. SIMS. You speak of practical things in a practical way and with a practical view, and I think you are right about it. Now stating it in a practical way, I will give you my own personal judgment. The people settle these things through their power to vote, through the exercise of the elective franchise, and at this time I think it would be as utterly impossible to take from the State railway commissions the powers that they now exercise, waiving all question as to whether they are beneficially exercised or not, and lodge them in a single Federal body of control—I think it is practically, politically impossible. And with 48 potential regulators of commerce, rate-fixers, and then with the forty-ninth asserting its power over all, and all the issues of credit instruments in the future to depend upon them, I can not see how you expect much better results in the future than we have had in the past. Believing that it is practically impossible to centralize Federal control, I think that the second proposition, national incorporation, will be fought to the bitter end by those who do the voting.

You perhaps have never been a candidate before the people for office and do not know just how a man feels. It is always very easy to talk about a man having moral courage, but until a man has been tested he does not know what he will do, is my observation. We passed a rural-credit law here in which we adopted 50 per cent of the land value of a piece of land; in other words, if a man wanted to borrow he must not borrow a sum exceeding 50 per cent of the land value, and not to exceed 20 per cent of the insured improvements. I went out in my district thinking I had a splendid thing to present to the people, and my opponent, who ran against me, said that anything less than 80 per cent of the entire value was an absolute failure and a denial of justice to the poor tenant farmers of the country, and enough of them took his view of it to come very nearly defeating your humble servant.

Mr. THOM. But they did not?

Mr. SIMS. They did not do it, but I do not know what the other experiment will do.

Mr. THOM. What did you think of that argument, Judge?

Mr. SIMS. I thought it was not economically sound and would lead to a speculative increase in the values of land and all that sort of thing. I made that argument; but the man who had \$200 in money and wanted to borrow \$800 to buy a piece of land costing \$1,000 paid no attention to my argument. He was after practical results.

Mr. THOM. Is it desirable that the matter of these great facilities, on which the public is dependent, should be made the football of arguments like that?

Mr. SIMS. It is not desirable; but the question, like the one you spoke of is, Is it practical to do it?

**Mr. THOM.** Let me see if I understand you. You say it is not possible for the United States Government to act on behalf of all the States?

**Mr. SIMS.** No; I do not say that. I say it is practically impossible to get the States to consent to this kind of a law.

**Mr. THOM.** To consent that the United States shall act on behalf of all of them, but to say, moreover, unless they do that, we have come to an impossible situation in respect to transportation, and your proposal is—

**Mr. SIMS.** The inevitable—

**Mr. THOM.** Your proposal is for Government ownership?

**Mr. SIMS.** I do not propose it.

**Mr. THOM.** But in your question that is your other suggestion. Now, what will become of these State governments that you allude to when you get Government ownership?

**Mr. SIMS.** They will not exist.

**Mr. THOM.** Therefore there is no difference between your suggestion and mine, so far as they are concerned.

**Mr. SIMS.** There is a very great deal of difference.

**Mr. THOM.** No, sir; in either event the authority of the State over these transportation facilities will disappear and be merged in the National Government that acts on behalf of all the States.

**Mr. SIMS.** They will be publicly owned and publicly operated, and then they will believe that this operation is performed with reference to equality among the people who receive the service, with privately owned agencies that do not believe it.

**Mr. THOM.** Why should there be any greater confidence in that when the Government owns it or when the Government regulates it?

**Mr. SIMS.** Simply because the Government has greater power of control and regulation than such agencies.

**Mr. THOM.** There is only this difference between you and me, the tendency of your questions and the purport of my answers, and that is I am asking that there should be a regulation on the part of the National Government in behalf of all the States, and you are asking that there shall be an ownership of all these properties by the United States in behalf of all the States, and in both events the authority of the local body to deal with these questions will be taken away, only it will be taken away much more under what you advocate than under what I advocate. Is not that a fair statement of it?

**Mr. SIMS.** Answering you offhand, it seems to me to be a fact that absolute ownership is more inclusive than regulation by that authority.

**Mr. THOM.** So the difference between you and me is not one of whether or not the States have continued to determine the standards of these agencies of commerce, but you think it ought to be to a greater extent in the hands of the National Government than I think?

**Mr. SIMS.** You are admitting, if I understand it, and I do not mean in terms—but that is the tendency of your entire argument—that present conditions can not continue in justice to the public?

**Mr. THOM.** You and I both agree on that.

**Mr. SIMS.** We agree on that. Now, then, you present a suggestion which I think is practically impossible.

Mr. THOM. Exactly. You present another one which is a greater denial to the States than I do.

Mr. SIMS. No; I do not present a suggestion at all. You, yourself, have suggested that in the absence of the success of the solution you propose Government ownership is inevitable.

Mr. THOM. And you say not only that, but you judge that what I propose is not worth anything to start with and that we should go to Government ownership now.

Mr. SIMS. No; I do not say it is not worth anything; I just say I am afraid, and very much afraid. In fact, I do not believe for a moment we can pass the laws you say are necessary to prevent Government ownership.

Mr. THOM. You interpret, then, what I say into a failure; you do not go back to a condition which you say is impossible, but you go forward to Government ownership, where every right of the State disappears.

Mr. SIMS. Remember, I am not making this argument in favor of State commissions; I am simply presenting to you a situation. It is not what we want to do, but what we can do. If it is practically impossible, it may just as well be physically impossible.

Mr. THOM. Judge Sims, I have profound faith that when the people of the United States understand that this thing is done in the interest of assuring them the commercial facilities which are essential that they are going to approve it; and if I were a candidate for office, I would not object at all to going before the people on that issue. I have been a candidate for office. You are mistaken in assuming that I have not.

Mr. SIMS. I did not know it. You know, then, how to sympathize with us.

Mr. THOM. I was not only a candidate for office, but I was elected. I was made a member of the constitutional convention of Virginia, and the man who attacked me was an eminent lawyer of my city; and he attacked me just along the lines you are talking about; and I did not run. I came out and I met the issue, and I beat him in every precinct in my city.

Mr. SIMS. Why did you not keep on running?

Mr. THOM. I did not have to. I got there.

Mr. SIMS. But for other offices. Why are you not in office now? You would be a valuable man in Congress.

Mr. THOM. I never was in Congress.

Mr. SIMS. We agree, Mr. Thom, that a situation exists that calls for relief, and that without relief progress is paralyzed.

Mr. THOM. You and I agree on that; the only thing is you want to take away more from the States than I do.

Mr. SIMS. I am not talking about taking away from the States. I am talking about whether the States will let us or not. They control, not we. When you admit that not over 1,000 miles of railroads were built in this Nation last year, you admit one of the saddest facts that it appears to me can possibly confront us. If that is not absolute arrest of development I do not know what it takes to constitute it, because nobody can claim for one moment that there was not a real, pressing necessity for a larger construction than 1,000 miles, and last year was a profitable year to the industries of this country.

Mr. THOM. The saddest fact, and one that is so large, which should not be brushed aside and that we should do that which will not further continue this state of national industrial commercial paralysis; but whether you are going to get it done by increasing the cost of the service to those already receiving it, and make it less beneficial to those who may hereafter receive it, I can not see that that can be done. I can not see that it is going to be possible to pass a national corporation act—that it is possible to pass an act that is going to deprive the State commissions substantially of the authority they are now exercising, and I can not see how we are going to get concrete results in sufficient amount and sufficiently comprehensive that the propositions of the railway executives present, to enact the legislation that they propose, or anything that would be substantially the same, and therefore not believing that that is possible—and I may be mistaken—then next year we are to have less than 1,000 miles of railroad built in the country, a country of this vast domain which needs so much, and which needs perhaps every trunk line in the United States doubled—I mean its trackage doubled, its facilities doubled. If you can present a gloomier picture than that, I do not know what it is going to be.

Mr. SIMS. The whole theory as to what effect it will have politically, as to whether a Member of Congress will appoint an engineer—and I am surprised that the great president of a great railroad system of this country thinks that we are so limited in our discharge of executive duties that the appointment of an engineer or a conductor on a railroad, if Government owned, would be left to the political interests of a Senator or Representative in Congress—if that is a fact and it should come down to that, then we need a new form of government worse than we need a new system of railroad regulation. Now, believing as I do that we have reached this state of arrested development, and believing as I do that we can not live under it and continue to prosper, it is not a question about what we want or I want. What can we get that relieves the situation—either the legislation which you are proposing, substantially complete, or such Government guaranty as to the future issues of securities so that you will find they can withstand competition of other Governments, which, according to the letter you have just read, may become very acute after this war is over, which will enable, along the lines of private ownership with Federal control, to furnish the country what it must have, or whether or not we shall have to go to Government ownership, either directly or indirectly, through stock ownership of present corporations sufficient to control them, or through an absolute ownership of the properties? Now, we are up against a great question, as I see it, and one that I can not treat frivolously, and I am afraid that I am absolutely incompetent to treat it from the best interests of the country. I mean in speaking, individually, for myself, and therefore I want information of every kind, and I hope that the railway executives and the owners of stocks and bonds will be heard before this committee with reference to the inevitable, provided the present scheme of legislation should fail.

Mr. THOM. That is very earnestly to be hoped, and it will be gratified by their coming. Now, what you said interests me greatly. As I understand, your proposition is this, that the idea of increased regu-

lation by the National Government, up to the point we suggest, is impracticable, because people won't have it; but you propose to go before the people and to say to them that the present condition is an impossible one. Here in a country not yet developed, not yet approaching the point of entire, complete, satisfactory development, the present system has brought about what is practically an arrested railroad extension. Not more than a thousand miles of railroad has been built in this whole country during the last year. Now, that is the situation that shows that the present conditions are unbearable, that the present condition must necessarily fail. Now, I know that you people are not ready to let the Federal Government regulate to a greater extent than they do now, because it will interfere with some of your own powers of regulation. I know that, but my remedy is for the Federal Government to own these properties entirely and to deprive you of any voice in your local capacity in respect to it, and I ask you to adopt that. Now, where would you get with such an argument? Don't it destroy itself?

Mr. SIMS. Well, I would have to cite a rural route in a community where the Government is performing transportation service, most satisfactory to the people who receive it, without any local control whatever.

Mr. THOM. When you do that, are you not arguing in favor of increased Government regulation, as much as in favor of Government ownership?

Mr. SIMS. I say that there is a concrete fact. The Government is to-day delivering package freight, all over the country, through Government agencies, to the absolute satisfaction of people who are receiving the service.

Mr. THOM. I do not believe that the people of this country will ever accept an argument which is based upon the fear of disturbing their control of these agencies of commerce, and present as a substitute for that, excluding them from the entire field of any possibility of exercising any local control, and I think you have got to go with your proposition, and that is where I think you will succeed. What this country needs is improved and increased commercial facilities and the assurance of every adequacy in all the future. That is what the country needs.

Now, it is time for us to take counsel together as to how that is to be obtained. You realize that you would not yourself go into these matters, if you were subjected to the varying policies of 48 different governmental bodies. Now, that can not stand. Which shall we have as a substitute for it, Government regulation or Government ownership? In either of them, this divided responsibility and this divided power ceases. Now, which shall we take? Do we want to go to Government ownership, or do we want to go to improved and increased Government regulation? Now, it is a fair argument. I do not think there is a doubt as to what the people would say now. It may be that something will happen in the future to show that the experiment of improved regulation will break down and that the other is inevitable, but I do not believe the American people are going to be content to take the step of Government ownership now.

Mr. SIMS. We all assume to be afraid to allude to a certain matter—not afraid, but rather not discreet to do so, and I won't ask

you to do it at all—but the exercise of franchise controls this country. No question about that.

Mr. THOM. Undoubtedly.

Mr. SIMS. Now, as between private, individual ownership and public Government facility and direct Government ownership, which is most liable to be involved in these interminable labor troubles and disputes? So far as I know, wherever the Government has done anything—I mean wherever the Government has pursued any line of industry—the Government has had absolutely no trouble with this interminable contest between labor and capital, and how can you operate the railroads of this country and not know what the demands of labor are going to be?

Mr. THOM. I think that that is a matter that the Government can control, Judge.

Mr. SIMS. It controls through Congress?

Mr. THOM. Yes.

Mr. SIMS. And Congress is controlled by the exercise of the elective franchise; do you know what sort of a Congress you will have four years from now?

Mr. THOM. We can only hope.

Mr. SIMS. But the Government itself, wherever it does own anything, operates it just the same way, regardless of a change in Government control. Now, I know this bugaboo about making politicians of all the employees of a railroad company is just about as substantial as making politicians of employees who carry the mails on your streets—just about as substantial and about as reasonable.

Mr. THOM. Judge, we can not accept the proposition that, notwithstanding the fact that the franchise controls the views of our public men, that it is going—either the views of the public or the views of our public men are going to be inadequate to deal with any situations that arise. If so, our system of government breaks down. Now, I am basing everything that I say upon the supposition that our system of government is possible; that while Congress may go wrong for a time, or while any public body may go wrong for a time, that ultimately it is coming to a sound and an honest view of every question. I think that that must be the reliance on the part of the American public, if it is going to believe in and be content with its own Government, and that thier leaders must in the end arrive at a sound conception of what the public needs are and make the proper legislation to get them.

Mr. SIMS. We have been generalizing. I want to ask you a few questions along your propositions which you have already fully explained, but under your system of compulsory incorporation—I believe perhaps some one did ask that question—I am not sure now—could you compel a railroad, owned by a corporation within the State in which the railroad is being operated, say, Texas, for instance—say you have a Texas corporation that owns a thousand miles of railroad, all within the State of Texas. Could you force that railroad company to take out a national charter simply because it, in connection with other roads, delivers to patrons on its route freight coming from some other State or going to some other State?

Mr. THOM. Yes, sir.

Mr. SIMS. In other words, you think that if they do that business, they must do it in the way the Government says it must be done?

Mr. THOM. The test is not the location of a physical property. The test is the character of business in which the road engages. Now, if the road that you speak of, being entirely within one State, wants to do business within that State and not carry any traffic in interstate commerce, it would have a perfect right to do so, and the United States Government would have no right to disturb it, but if it wants to engage in interstate business—wants to carry traffic which is interstate traffic, then this Government can say that unless you take out a Federal license or a Federal charter of incorporation you can not continue to do it.

Mr. SIMS. Now, then, take a great State like the State of Texas, being 67,000 square miles; larger than the German Empire—

Mr. THOM. Why use Texas all the time? Take some little State.

Mr. SIMS. It illustrates what I am speaking about. Could not a Texas railroad corporation build a system of roads, one terminus at El Paso, one at some eastern town in the State of Texas, one at a northern town, another one at the Gulf somewhere—could they not do all of the business they wanted to, to the end of their terminals, and not take a bill of lading or anything else to go beyond the State, and yet some other road, an interstate road, pick it up at the end of that line and carry it on wherever it wants to?

Mr. THOM. Not without its being still interstate commerce. The Supreme Court of the United States has held—which I am sure your judgment as a lawyer will indorse—that through no form of handling business can the intrinsic character of the traffic be changed, and if the traffic was really an interstate shipment it is not prevented in being an interstate shipment by where your billing starts and your billing ends, but it is the real nature of the transaction itself.

Mr. SIMS. Well, now, I admit that. I understand it; I mean I understand the decision.

Mr. THOM. And, therefore, to answer categorically your question about the device of billing to the end of a road interstate traffic, the road could not violate the laws of the country.

Mr. SIMS. Well, now, let us see whether it could not. Here is a firm doing business in El Paso. Here is a firm doing business, not in Shreveport, but in the nearest Texas town—Texarkana. That illustrate very well. Now, this firm here is doing business. It is buying and selling, and the El Paso firm is buying large amounts of Texas property, for which California has a demand and furnishes the market. Now, that firm can buy all of the Texas property it wants to, have it shipped to El Paso and stopped; then it can resell to a California purchaser, can it not? A man comes there and buys it and wants to ship it to California.

Mr. THOM. The question is, what was the transaction from the beginning? If it is a device to change interstate traffic into intrastate traffic, it can not succeed. If it is a fact that it was honestly intrastate traffic, up to the time of being delivered at the ultimate destination in the State, then that could be done: that could be done because then that would be simply intrastate traffic, honestly intrastate traffic, but if that is a course of business intended as a device, it can never succeed at law, nor can it succeed as a practical matter, because there will be some other road that will come along and take that property, without breaking bulk, and carry it very much quicker to destination in another State, and there will be no chance of this

broken shipment and reshipment transaction succeeding in competition with the other.

Mr. SIMS. Now, then, another question. I am leading up to one, the reason I am asking these preliminary questions. Now, then, you have a great cotton purchaser and dealer in cotton at Texarkana, in Texas. He buys thousands and hundreds of thousands of bales of cotton in the State of Texas, shipped on a Texas railway, intrastate railway, which terminates at Texarkana. He has got that cotton to sell, say Philadelphia purchasers, Boston purchasers, and other purchasers buy that cotton of him, and ship it straight on. That is all in perfect good faith. Why can he not do that?

Mr. THOM. Because there is a vast bulk of that railroad traffic that could not be handled in that way, and for that purpose of evading the effect of the laws of the land, and that railroad would not for a minute stay out of the national system of incorporation, because it would be sacrificing its facilities and its opportunities of doing business.

Mr. SIMS. Now, we are coming to the question—

Senator UNDERWOOD. Mr. Chairman, will Mr. Sims allow me to ask a question a moment—not ask it of him. I want to ask the committee—I have got an appointment and must leave in a few minutes—I want to ask if it is the purpose of the committee to meet to-morrow.

The CHAIRMAN. I have canvassed the committee and find that the impression is against meeting to-morrow. There will be a recess until Friday at half past 10.

Mr. SIMS. Now, the State of Texas makes 4,000,000 bales of cotton, upon the average, every year. Perhaps it will make 10,000,000 some day. Now, the average cost of railway construction, maintenance, and operation in the State of Texas is so much less than the average cost of railway construction, maintenance, and operation from Boston and New York and Texas as to enable a Texas railroad to perform the largest part of that haul economically and profitably at much less than the through rate would have to be, if the through rate was based upon the reasonableness of a rate that these other States would have to charge. Therefore, there would be a burden placed upon the State of Texas, or its industry, by national incorporation, provided a rate could then be put upon the producer of the cotton in Texas for the proportion of the haul in Texas that exceeded what the pro rata part of such a service would be, if confined to Texas. So that a system of rate making that would put a rate from Boston to Galveston or to El Paso or to San Antonio, that would be a reasonable and fair rate for the entire service, but for the Texas part of it would exceed what it would be if done by a Texas corporation—why is it not to the interest of the State of Texas to encourage a system of State railways, built wholly within the State, to carry away those products to a border market so as to escape the additional cost of transportation over several hundred miles, that would be added provided they had to pay the average through rate?

Mr. THOM. Judge, how many railroads in Texas are in bankruptcy to-day?

Mr. SIMS. I do not know.

Mr. THOM. Are they all, pretty nearly—

Mr. SIMS. I do not know. I do not see that that has anything to do with the question I have asked.

Mr. THOM. I think so.

Mr. SIMS. I assume that the railroads in Texas can do it cheaper than the average haul to the average destination of the cotton.

Mr. THOM. Yes, sir.

Mr. SIMS. I assume they can do a profitable business for a less rate than the average through rate.

Mr. THOM. You have assumed that in reference to interstate shipments, have you not?

Mr. SIMS. I have assumed that with reference to a product which will ultimately be used or consumed in another State.

Mr. THOM. The real purpose is to accommodate an interstate movement, or what is practically an interstate movement?

Mr. SIMS. Oh, no; it is the purpose to enable people to grow cotton in Texas, to have a freight rate through Texas that is reasonable, just and fair and profitable, for the Texas haul.

Mr. THOM. No; now the real destination of that commodity is in another State or in a foreign country.

Mr. SIMS. Well, that is, a greater portion of it would be, naturally.

Mr. THOM. That is what I say. Now, if Texas, and if each State can, on such a haul as that, divide up, according to its local condition, you have State regulation instead of United States Government regulation of a commerce that is distinctly interstate. Is that right? What is the meaning of State line for interstate commerce? Didn't every State, when it came into the Union, agree that there should not be any such thing as State lines so far as commerce passing beyond is concerned, and what possible justification is there for dividing those territories now by State lines and trying to fix rates by State lines? You destroy the very constitutional system on which equality among all the people is dependent. Then, on your suggestion, this Texas commodity would have to pay, perhaps, a lesser rate in Texas, on your assumption, but then they would make that up in a subsequent part of this movement where it had to pay a greater rate than it does now.

Mr. SIMS. You mean for incoming commerce?

Mr. THOM. No, sir; for that matter, when you take your Texas shipment and later go out of Texas up to Chicago, then you say in Texas it has a very cheaply built road and ought to have a low rate, but that commodity when it gets out of Texas goes on a road more expensively built, and according to your theory it ought to have a higher rate. Now, taking the shipment through to the final destination it would be part of the way on a very cheap rate and the balance of the way on a much higher rate, but the result to the commodity would be the same. Now, why divide that by State lines and not in accordance with the way the shipment actually moves from a State point to a point in another State?

Mr. SIMS. Judge, the policy as given forth by the Texas commission, I believe, is that they were trying to develop Texas business.

Mr. THOM. Is that a constitutional purpose?

Mr. SIMS. Now, let me ask this question: Suppose instead of shipping this cotton and selling it to a purchaser in Texarkana he sells it and ships it to a manufacturer in Texarkana in order to get a lower rate on the raw material, lower than he will have to pay if he ships it to any New England points, he buys it up and manufactures it in Texarkana or points where he gets the benefit of this low Texas

rate, and then ships out the manufactured products to these States, would it not result exactly—

Mr. THOM. I do not think so.

Mr. SIMS. He is getting the advantage of lower priced cotton and manufacturing it in the State where the transportation cost is naturally lower than the average transportation elsewhere.

Mr. THOM. Here, you say Texas has got a policy of building up Texas. That means Texas people dealing with Texas distributing points. Suppose you take New York, with its immense markets and its immense ports, and let it have a similar policy of excluding other States. Now, New York has a great deal to give to other States. Would you have a well-balanced system of commerce among the American States when you would give to New York and Pennsylvania and Massachusetts, with the three great markets of those States, the right to exclude the other States?

Mr. SIMS. I am not talking about the merits of your proposition. I am talking about the possibility of enacting the legislation. What will the State of Texas do, with her 18 or 20 Members of Congress, counting those in the Senate—what will they do about enacting a national charter provision of this kind that will increase freight rates on the large cotton crop of that State? Will they vote for any such thing? I am talking about the practicability of getting this legislation.

Mr. THOM. I do not know what the Texas delegation will do. My hope is that they will take a comprehensive and national view of the whole situation.

Mr. SIMS. But your observation has been, I judge—and I am afraid it is the observation of everybody—that there is always a circumscribed local conception—

Mr. THOM. But if a man—

Mr. SIMS. It does not matter about a man, because if they do not have men that represent them they turn him down and get others who will. This is a practical matter.

Mr. THOM. If we are going to have men in Congress who can never get outside of their local situation, we are in a bad way.

Mr. SIMS. Do you know of any way of getting them here in opposition to a local situation?

Mr. THOM. I hope they are here, now, Judge.

Mr. SIMS. Do you know of any way of getting them to act in spite of a local or district interest?

Mr. THOM. The only way, as I see it, is to get the district to realize and appreciate what its real interests are.

Mr. SIMS. They always—

Mr. THOM (continuing). And not be governed by a narrow view.

Mr. SIMS. They always think the particular thing which they are doing in that locality is the dominant patriotic consideration. Let me tell you something of your own State. I had to go up against it myself. A portion of the State of Virginia raises peanuts, and the delegation of Members of Congress elected from Virginia in that section came before the Ways and Means Committee and demanded a high protective duty on peanuts when the Payne law was passed. Were they patriots or not? It was contrary to the Democratic policy and Democratic doctrine, and yet those Members from Virginia, as good Members as we had, pleaded before that committee to comply

with request of the peanut growers, who sent them to Congress, to give them a high protective duty, right in the face of the Democratic position on that subject.

Mr. THOM. The only answer I can make to you is that this proposition is a great deal bigger than a peanut. [Laughter.]

Mr. SIMS. In the district from which these gentlemen came it was the largest issue which they had. I am talking now about practical things.

Mr. THOM. I do not know, but I hope that those gentlemen from the peanut district of Virginia will rise to the national and universal aspects of this great problem. I do not know whether they will or not.

Mr. SIMS. What is a Representative of Congress? Is he not an agent of those who send him here?

Mr. THOM. Yes; he is; but he is an agent to do this: He is elected to represent the highest and most enduring interests. He is not an agent to simply reflect the whims and lack of judgment in his district.

Mr. SIMS. How many Representatives could be elected from the district in Virginia in which the Newport News Ship Building & Dry Dock Co. is located who are opposed to the building of ships there?

Mr. THOM. I do not know.

Mr. SIMS. You must deal with these matters in a practical way. Your Virginia man could not come to Congress if he would not represent the peanut growers in Congress, because if they did not do so, some others would. The peanut would still have been in Congress. That is a fact. You can not get away from it.

Mr. THOM. You are drawing a mighty gloomy picture of this country if no man can see beyond his own district.

Mr. SIMS. I am talking about the past and present.

Mr. THOM. Let us talk about the future.

Mr. SIMS. Will, didn't I see, on the formation of the tariff bill, a southern Senator, a good man and able man and a patriotic man, as patriotic as any, ask for a protective duty on sea island cotton that grew in his State.

Mr. THOM. I can only defend my proposition, and not Congress.

Mr. SIMS. But Congress has to take care of these conditions, and Congress is the country; and when you are talking about theoretical things we ought to see what can be done.

Mr. THOM. Judge, I think I think better of Congress than you do. May be I do not know what you think about it.

Mr. SIMS. I have been here 20 years, and it is still a problem to me—or I will have been here 20 years soon. Here is a proposition that is an actual fact. It is a condition that confronts us, and not a theory, and you have got to do something. I believe that you will have to go in and reform local views; and if you think you can do so I suspect that you will have a pretty difficult long-distance matter to undertake.

Mr. THOM. The problem is for the country to assure itself that the very fundamentals of its commercial prosperity are provided for.

Mr. SIMS. To help the country through the railroads, you mean?

Mr. THOM. If I should come to you with a private interest in respect to this matter, I should not complain that you should discard my whole argument.

Mr. SIMS. The great cotton crop of Texas to them is not a private interest.

Mr. THOM. It is not?

Mr. SIMS. Not in the attitude they take of it.

Mr. THOM. If you go to take any of it, you will find it is.

Mr. SIMS. It is not, though. It is just as dominant an interest with them as the peanut industry is to the people in your State. They think the people who eat them should aid them by paying a protective duty, a higher protective duty. I have found in my experience whenever a protective tariff will receive or assist an industry in a Democratic district it is difficult to find a man who will not urge a protective tariff for that industry.

Mr. ADAMSON. A parliamentary inquiry, Mr. Chairman. Was not a law passed to put a protective tariff on peanuts?

Mr. SIMS. It is on there now, and has been on there. They wanted it increased. It was not sufficiently large. Now, I want to help the situation, if I can.

Mr. THOM. I am encouraged by that, Judge, anyhow.

Mr. SIMS. The situation now is one that confronts the whole country, and as to the future, inasmuch as unbridled private ownership for many years had its reign, and wrought wreck and ruin upon the railroad industry, and inasmuch as we can no longer finance the railroads as they were once financed, as you, yourself, admit—inasmuch as the complex regulation of 48 States and the General Government which does affect, perhaps injuriously, railroad facilities—inasmuch as we feel morally certain that your propositions as a whole are not going to be adopted, right or wrong, whether they approve or do not approve of them, it does seem to me that you and those who represent the owners of these properties, which they now do not want to sell, should begin to consider the inevitable and be ready to make some sacrifices themselves and to quit drawing dividends, when, in order to do so, they deprive their own railroads of sufficient facilities to do the business of the public.

Mr. THOM. I know of no case where that is done.

Mr. SIMS. How many millions of dividends were paid last year?

Mr. THOM. I do not know. There is a vast percentage of the stock of the railroads of the country that did not pay 1 cent.

Mr. SIMS. There was still about a billion dollars of net earnings paid, as I recall.

Mr. THOM. I do not think any judicial mind will complain of the railroads' dividends in the last series of years.

Mr. SIMS. Has any railroad a right—charged with the interests of the public—to pay dividends at the cost of necessary equipment on that line?

Mr. THOM. It has no such right, nor can you get new money into a railroad unless there is a return on the money already there. Your problem, however, as a statement, is not to deal with anything except suggestions to provide for the future. That is what statesmen are for.

Mr. SIMS. I have not heard yet of any propositions brought up with reference to dealing with railroads that did not put in, as a condition precedent, that the stockholders should not have a fair return on their money in the way of dividends paid out. A dividend

is earned and properly paid if it is put in the equipment of the railroad.

Mr. THOM. How can you deal practically with the question of railroad credit unless there is some return actually paid out?

Mr. SIMS. I do not regard a stock sale as a credit instrument.

Mr. THOM. I think, if you will—

Mr. SIMS. If I owned a hundred acres of land, and I sell a one-fourth undivided interest in that to somebody else, I do not regard that as a credit instrument at all. I just part with a part, and somebody bought it for what they thought it worth. Every time a railroad, without extending its lines, increases its stock sales, the individual interest of the remaining stockholders is lessened, unless they buy additional stock in proportion to that which they owned. I do not regard it as a credit facility at all.

Mr. THOM. When that amount of money that the stock brings in is expended in increasing the plant, is it not?

Mr. SIMS. If the plant is in being, no.

Mr. THOM. When you sold your farm, you put your money in your pocket.

Mr. SIMS. Yes, sir.

Mr. THOM. If the stock of the railroad is sold, the money which it brings in is put into the plant and not into the railroad's pockets. There is an increased asset.

Mr. SIMS. He has his value, which is represented by the increased value of the property into which it went, just the same as in receiving dividends on the stock, but instead of declaring a dividend of 5 per cent or 4 per cent or 6 per cent, that money is expended in the plant; that is an investment. He has his dividends, but in the form of more valuable property.

Mr. THOM. At the same time, Judge—I do not know whether we are getting anywhere, but it seems to me where you and I stand is this: You say that the present condition is an unbearable one from the standpoint of the public and there must be a greater assurance of the facilities than there is now, under existing conditions, and this must be provided for the future. That is what I say.

Then your conclusion from that is that there ought to be Government ownership, and my conclusion is there ought to be improved regulations. You are the men to determine that.

Mr. SIMS. No; I do not state my conclusions just as you have stated them. In the first place, my conclusions are that something has to be done. My next conclusion is that that which you propose can not be done. Something has to be done, and that which you propose can not be done, and you say, in the absence of that being done which you say ought to be done, that Government ownership is inevitable. I am only asking you to consider the inevitable, not as desirable, not as a first thought, but as a reasonable probability.

Mr. THOM. But that is your conclusion, that it is inevitable. I say you are the man to determine that, among others.

Mr. SIMS. You have just announced that doctrine yourself, that you agree it is inevitable.

Mr. THOM. Undoubtedly.

Mr. SIMS. Then we both agree?

Mr. THOM. No; we do not agree, because you say that what I suggest can not be done.

Mr. SIMS. I say I am afraid it can not be done.

Mr. THOM. I think it can be done.

Mr. SIMS. I think so.

Mr. THOM. But I know so. And I think it can be done. Now you say that in view of your idea it can not be done, that something else more drastic must be done, and that is Government ownership. I say that I have presented my views on that subject. You are the men to determine that; I am not.

Mr. SIMS. I asked you if you discussed this matter with your executive committee and the owners of the railroads?

Mr. THOM. It is not a matter to be discussed with them. The Government can resort to Government ownership without their consent. It is not a matter for them to consent to. You can adopt the policy of Government ownership without our consent.

Mr. SIMS. But you are not willing to sell?

Mr. THOM. We do not have to be willing to sell for Government ownership.

Mr. SIMS. I think you will have to come to that conclusion before there will be any Government ownership.

Mr. THOM. I do not know about that. Of course, I can not tell.

Mr. SIMS. As long as your property is so valuable, so desirable to the present owners, the present owners are going in some way or other to continue in the railroad business.

Mr. THOM. Let me make one prophecy. If the present system is persisted in, it may not be long before the principal advocates of Government ownership are the railroad owners themselves.

Mr. SIMS. I think it is inevitable; it is bound to be that way. I think you are exactly right about it.

Mr. THOM. You can not complain if they are trying to do the thing which they believe will meet the public conditions under that Government ownership, and we have brought that question directly to you; you are one of the 10 men who are primarily to pass on it. We brought it frankly to you and stated our views. Is there anything else we can do than that?

Mr. SIMS. So you have not studied the matter so that you can give your views as to whether or not it is practicable or possible to introduce some guaranty of Government earnings, secured by a lien on the properties?

Mr. THOM. I told you about that, that I believed that Congress would never consent to a governmental guaranty. As I stated before, you know Congress better than I do.

Mr. SIMS. I did not suggest it as a proposition coming from you, but as a possible suggestion.

Mr. THOM. I know; but whatever authority it comes from it never occurred to me that the Government should guarantee the securities of these railroads. It may be that you are right about it. If the Government is ready to guarantee the returns on these securities, it is a new situation to be taken up and dealt with. Nobody on the part of the railroads ever believed that possible.

Mr. SIMS. The railroads first had to consider it as a fact that the Government would have to be secured by first liens on all existing properties as to any defaults in earnings the Government might have to make good, and that is a matter of contract.

Mr. THOM. You appreciate that is simply rapid progress to absolute destruction?

Mr. SIMS. I do not think I would advise the Government to guarantee an uncertain business.

Mr. THOM. Suppose a railroad company were to make an arrangement to pay out a certain amount to its security holders, and if it did not earn those dividends to put them as a lien upon their property. How long would it be before that property would become absolutely worthless to the owners, eaten up?

Mr. SIMS. If it is good property it would not be, because the Government is only guaranteeing the payment of a minimum dividend and giving them the benefit of all over and above that, and if the Government loses on the minimum dividend, if the Government has to pay something the railroad did not make, the sooner it goes into liquidation the better. With a minimum dividend, one by which they can earn and one which will make a market for their securities, without depending on the uncertainty of labor and the uncertainty of the cost of material and the uncertainty of conditions over which the railroads themselves have no power of control—if the prior owners are not willing to risk this, then the Government certainly should not risk it.

Mr. THOM. Do I understand that you are agreeing with the conclusion that the Government will not be willing to guarantee the return on these securities?

Mr. SIMS. I doubt it exceedingly, because, as you say, it is a new question and has not been discussed. I am only speaking of it as a possible solution, lying between the field of absolute private ownership and absolute Government ownership—a Government corporation.

Mr. THOM. If the Government is not ready to do it it is not a possible solution, is it?

Mr. SIMS. I mean as a possibility. The Government, of course, as I say, having a control in the railroads over the stock, I mean to the extent of the stock upon which the Government has guaranteed a dividend so as to see what the Government official approves is done by the railroad. In other words, they would have to submit to that which is partially Government ownership—that is, if the result is equal to it—that anybody that can absolutely regulate your earnings on any piece of property potentially owns the property to all intents and purposes.

Mr. THOM. You think you have got us now?

Mr. SIMS. I think we have.

The CHAIRMAN. Are you through, Mr. Sims?

Mr. SIMS. I am going to suspend for the present.

Mr. ADAMSON. I know it is not according to our ruling to ask a question out of turn of the witness, but it is not a violation of that rule to ask Judge Sims a question, is it?

Mr. SIMS. I will not object.

Mr. ADAMSON. If we are actually in a condition of wreck and ruin and destruction and the only avenue of escape is the alternative proposition of Government ownership or regulation of the carriers, which they themselves prepare and dictate, would it not be safer for us to reject both alternatives and repeal the commerce clause of the Constitution?

Mr. SIMS. The judge has started a new proposition which I have not considered as possible or probable.

Mr. THOM. I want to enter my protest here, Mr. Adamson, against the suggestion that the carriers are dictating any terms. I was asked by none more earnestly than Judge Adamson to come here and make our suggestions, and I do not think it is fair now to put us in the position of trying to dictate terms.

Mr. ADAMSON. I will change the word from "dictate" to "suggest."

Mr. THOM. I am very glad to have the change, Judge.

Mr. ADAMSON. Yes; I will say "suggest."

The CHAIRMAN. Have you concluded your examination, Mr. Sims?

Mr. SIMS. There are some matters I may wish to bring before Mr. Thom, on which I am not prepared, later in the hearing. They may be brought out by some other gentleman, or some other witness, and I may not inquire further in the subject.

Mr. ADAMSON. I move that the committee do now adjourn.

Mr. CULLOP. Until Friday morning, at 10.30 o'clock.

The motion was agreed to, and, at 1.20 o'clock p. m., the committee adjourned until Friday, December 1, 1916, at 10.30 o'clock a. m.



# INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT CONTROL AND REGULATION.

FRIDAY, DECEMBER 1, 1916.

UNITED STATES SENATE,  
JOINT COMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The joint committee met at 10.30 o'clock a. m. pursuant to adjournment, Senator Francis G. Newlands presiding; also Vice Chairman William C. Adamson.

The CHAIRMAN. The committee will come to order. We will now go into executive session for a short time in the adjoining room.

(The committee proceeded to the consideration of executive business, and after such consideration the doors were reopened.)

Mr. ADAMSON. Mr. Chairman, in the nature of a matter of personal privilege as well as pro bono publico I want to read an extract from a newspaper and make a remark upon it for the record. Mr. Davis, will you please read it?

(The assistant clerk read as follows:)

EIGHT-HOUR LAW IS NOW BEFORE COUNCIL COMMERCE CHAMBER—SUGGESTIONS THE RAILROADS WILL MAKE TO JOINT CONGRESSIONAL INVESTIGATING COMMITTEE ARE OUTLINED.

WASHINGTON, November 17.

Some of the suggestions the railroads will make to the joint congressional investigating committee, which begins hearings on transportation questions here Monday, were outlined to-day at a special meeting of the national council of the United States Chamber of Commerce by A. P. Thom, counsel of the railway executive advisory committee. Thom's presentation of the railroads' suggestions was preceded by speeches which brought the eight-hour law squarely before the council. Representative Adamson, author of the law, declared he believed it unconstitutional and thought Congress would enact supplementary legislation before the congressional investigating committee reports to make impossible another situation such as confronted the Nation when the brotherhoods threatened to strike.

Mr. ADAMSON. Mr. Chairman, I wish to say—

Senator ROBINSON. What paper is that taken from?

Mr. ADAMSON. It is from a paper in Paducah, Ky. I do not know the name of it.

Senator ROBINSON. Was the report sent out from here?

Mr. ADAMSON. Yes. That paper has either been badly imposed upon or it is grossly imposing upon somebody else, and it affords me pleasure to say that I conferred with the members of the Associated Press about it and am able to acquit them of any guilt in the matter. It is a monstrous medley of misrepresentation, and I wanted it put in the record in that way. I wish to add that not only did I not say that I believed the law unconstitutional, but I believe that any man who would believe that would believe anything.

Senator ROBINSON. Have you ascertained who sent out the report, who instigated that?

Mr. ADAMSON. I have not.

Senator UNDERWOOD. Mr. Chairman, will you please announce the conclusion of the committee before we proceed?

The CHAIRMAN. The committee has come to the conclusion that it will hold meetings to-morrow, Saturday; next Wednesday, Thursday, and Saturday at 10 o'clock, to adjourn not later than 12 o'clock noon.

Senator ROBINSON. From 10 o'clock until 12?

The CHAIRMAN. From 10 o'clock until 12 next week.

Mr. THOM. Do those hours relate to to-morrow also?

The CHAIRMAN. No; to-morrow the session will be from half past 10 until half past 1.

Mr. THOM. Has the committee, may I ask, gone further in its plans than next week?

The CHAIRMAN. No. Mr. Underwood, will you proceed with the witness?

Mr. ADAMSON. Mr. Chairman, with regard to that last inquiry of Mr. Thom's, the committee thinks that after he has completed his examination we will be better able to determine upon any further program.

Senator UNDERWOOD. Mr. Chairman, the questions that have already been asked Mr. Thom by other members of the committee cover the field of interrogation that I had in mind, and I do not care to occupy any time in making inquiries.

Mr. THOM. Before proceeding, Mr. Chairman—

The CHAIRMAN. Mr. Cullop, will you proceed with the witness?

Mr. CULLOP. I understand that Mr. Thom desires to make a statement, Mr. Chairman.

**MR. ALFRED P. THOM—Resumed.**

Mr. THOM. Before proceeding I would like to do what I can to clear up a misapprehension which I understand exists in some minds with respect to one of the proposals which we have submitted to the committee. The idea seems to have obtained somewhere that under these proposals our intention is to do away with the State authority and State commissions. I wish it to be distinctly understood that we are making no such proposals. We have not undertaken to outline the exact place where the separation between State authority and Federal authority should be, but we have announced the principle which we advocate and which I now wish to emphasize, and that is that in the matters where the exercise of authority by a State exists beyond the State border and affects the affairs of another State, or affects in a substantial way interstate commerce, that then the authority should be entirely national. In those matters, however, which do not exist, where the authority of the State did not exist beyond its own borders, but deals with affairs within its borders entirely, we do not advocate the substitution of the National for State authority. Of course, when we come to consider where a line ought to be exactly drawn, we find some matters falling on one side of the line and some matters on the other side of the line. I am not now attempting to discuss the specific matters, but to announce the principle which we advocate, and that is—and I repeat it—that no State should want to exercise an authority in a matter which extends beyond its own borders and affects the affairs

of another State and the people of another State, or which affects interstate commerce, but in those matters entirely within its own borders of course it ought to continue to exercise the proper authority in respect to them.

Senator ROBINSON. May I ask you a question?

Mr. THOM. Yes, sir.

Senator ROBINSON. Does your statement now apply to the making of rates for purely intrastate traffic?

Mr. THOM. It does. We think that the making of rates of an interstate carrier on intrastate traffic does affect the people of other States and does affect interstate commerce.

Senator ROBINSON. I do not think I made my question quite clear to you; at least your answer does not seem to me to be quite responsive to my question. On purely intrastate traffic, carried upon a railroad which is also engaged in interstate commerce, do you think that the Federal Government should fix the intrastate rates?

Mr. THOM. Yes. I have said that fixing of an intrastate rate constitutes what would be the measure of contribution by the traffic of that State to the upkeep of the interstate carrier, and would also have the effect of controlling the carriers of commerce.

Senator ROBINSON. I merely wanted to know whether your statement this morning was a modification of your former statement. I understood your former statement very clearly.

Mr. THOM. Not at all; I am trying to make clear my former statement with the statement now, as I said then, that I think that the fixing of intrastate rates on interstate carriers is a national matter.

Senator ROBINSON. Now, you say as to purely intrastate matters the States ought to control. What would that embrace?

Mr. THOM. I think the grade crossings—I am illustrating—the grade crossings, the establishment of stations—

Mr. ESCH. The speed of trains?

Senator ROBINSON. Why the speed of trains, if it is a through train?

Mr. ESCH. It is police authority.

Mr. THOM. I am not certain about that, Mr. Esch, with respect to the speed of trains. I think that is a debatable matter and I form no special judgment upon it. For example, we find this situation, that the carrier will not stop a through train at a certain locality because the judgment of the carrier is that it would best accommodate the travel by not doing that. Very frequently there have been local ordinances requiring the train speed to be reduced to two or three miles an hour through that locality. Now, that affects the whole through movement.

But those are matters for this committee to take up and pass upon. The principle, Senator, which I have announced, and which appeals to me, is the one which I have tried to express.

Senator ROBINSON. The statement you have made this morning does not differ, as I understand you, from the statement you made before?

Mr. THOM. Not at all. I was trying to correct a misunderstanding I believed to exist of the statement I had made. I was not attempting to modify it. I was attempting to impress it and emphasize it.

Senator ROBINSON. I think I understood you correctly in the beginning.

Mr. THOM. I think you did, but I heard that some gentlemen who are not attending these meetings had a different view, and I merely wished to emphasize that.

The CHAIRMAN. Mr. Cullop, will you take the witness?

Mr. CULLOP. Mr. Thom, I want to ask you a few questions that I do not think have been brought out, at least to my mind, clearly. Other members have covered the ground pretty fully and I only have a few matters that I want to interrogate you about.

Mr. THOM. Yes, sir.

Mr. CULLOP. Would not national incorporation remove the trial of causes between the citizen and the railroad company from the State courts to the Federal courts?

Mr. THOM. No; the act of Congress would take care of that.

Mr. CULLOP. In the event of national incorporation, do you think it would be advisable to have a provision maintaining litigation in the State courts?

Mr. THOM. I do.

Mr. CULLOP. As between the citizen and the railroad?

Mr. THOM. I do. You will find a parallel to that, Mr. Cullop, in the litigation under this liability law. There, by express terms of the act of Congress, the litigation must take place in the State court unless there is some ground for removing it elsewhere.

Mr. CULLOP. Other than the fact that it is a Federal law?

Mr. THOM. Yes, sir; or a Federal question. In order to be entirely accurate I will say preventing the removal to the Federal courts of a litigation instituted in a State court simply on the ground that there is a Federal question involved arising under a Federal statute.

Mr. CULLOP. I have long since had the idea that such a provision ought to be generally adopted, as it would relieve the citizen of many burdens which are now imposed on them in the way of litigation by removal of cases.

Mr. THOM. I am entirely in sympathy with preserving the terms of the act of Congress as to the jurisdiction of the States—in the State courts, I mean.

Mr. CULLOP. In many instances it is practically a denial of justice because of the added litigation. Now, you spoke of double taxation. Do you not think that the matter could be remedied by a provision of law providing exemption on the part of the mortgagor to the amount of the indebtedness of the mortgagee by some provision of law?

Mr. THOM. That may be entirely controlled. At one time I heard you call attention to the law of Indiana.

Mr. CULLOP. On real-estate mortgages?

Mr. THOM. On real-estate mortgages, and that is a perfectly practicable and feasible method. It is a question merely of the policy that Congress desires to adopt in respect to it.

Mr. CULLOP. What would be the result of such legislation in the event that the mortgagee and mortgagor lived in different taxing jurisdictions?

Mr. THOM. Then it would be to transfer the benefit of the taxing power from one jurisdiction to the other, as to some value of the asset.

Mr. CULLOP. Could that be done under the power of the State?

Mr. THOM. That part could be done. The whole thing could be obviated, though, by a different method of applying the taxing power.

Mr. CULLOP. It is certainly unfair to have the double taxation as it is, or at least ought to be, enforced now so that either the mortgagor or mortgagee should have some relief, so as to avoid double taxation.

Mr. THOM. The justice of that proposition is undeniable, it seems to me. How far it is practicable as a system of taxation, is another question.

Mr. CULLOP. In the State of Indiana we have a law relating to mortgages on real estate that upon application to the proper authority the mortgagor can be relieved in the taxation of his property in an amount equal to the mortgagee's interest, whatever the loan may be. Do you think that such legislation as that would obviate the matter of which we spoke then in reference to double taxation?

Mr. THOM. Of course, that removes the objection of double taxation.

Mr. CULLOP. Now, as to the reorganization of the Interstate Commerce Commission, what would you think of a plan to reorganize it on the plan of the Federal judiciary? Take, for instance, the Interstate Commerce Commission, composed of seven or nine members as the supreme authority, and then divide the United States into different districts with commissioners to hear the complaints in their respective districts, with the right of appeal or removal to anyone who might complain of a ruling, to the Interstate Commerce Commission, where it could be reviewed just as you do now in cases in the Federal courts?

Mr. THOM. If I understand your question, it is practically the suggestion which I have been advocating here.

Mr. CULLOP. I am glad to know that you have.

Mr. THOM. That seems to me to be in principle the same.

Now, I suggested here, in the course of my remarks, a system by which the Interstate Commerce Commission should consist of seven to nine members, as they or Congress may feel is the necessary number, to sit in Washington, and with what we call "regional commissions," to correspond, as I understand it, with your suggestion of a distribution of subordinate bodies into districts to be determined by Congress.

Mr. CULLOP. Inferior tribunals?

Mr. THOM. Yes; and they would be close to the place where the complainants were and would live there and be acquainted with the local atmosphere and local conditions, local views; and they could take all the testimony, hear all the case right there; formulate their conclusions on it, and send them up to the Interstate Commerce Commission, where it would be subject to exception, as you have suggested, and those exceptions to be argued before the Interstate Commerce Commission either by the complainant or by the carrier, or by anybody who might be in interest—any community; and with

power, likewise, to the Interstate Commerce Commission of so controlling the matter that, even without exception, they may say, "We will not let that decision pass through here notwithstanding no one objects to it, because it puts the administration of the law in that section entirely different from what we have determined on for the balance of the country." So, as I understand it, Mr. Cullop, the suggestion you have made, and the view I have, are entirely in harmony.

Mr. CULLOP. I am glad to know that. Supposing you were to divide the United States into 12 or 16 different jurisdictions or circuits, with a commission of three, who would occupy the relations with the Interstate Commerce Commission that a district court—Federal court—now occupies to the Supreme Court, giving such a court or commission the right to hold hearings over their respective districts, so that the litigation would be brought close to the people, and with the right of appeal to the Interstate Commerce Commission by filing exceptions, or otherwise as might be provided by law, and with the right in the Interstate Commerce Commission to review the question, if either party sought to have it reviewed; could you not, in that way, bring the settlement of all these disputes near the people and give them better opportunity—in fact, both sides—to be heard where their witnesses reside, and where the questions in dispute arise?

Mr. THOM. I think so. May I illustrate that just a little?

Mr. CULLOP. Now, in the event of doing away with the State commissions, about which you have spoken, would not this take the place and afford each State or community the right of regulation and be no conflict between the two authorities?

Mr. THOM. Yes; except that I have not advocated, as I have just explained, doing away with the State commissions, but in the respects that the jurisdiction of the State commission was transferred to the National Government, it would be just as you say. Now, may I illustrate what I know to be the difficulty—one of the difficulties?

Mr. CULLOP. I will be very glad to have you do so.

Mr. THOM. This is what I know to be one of the difficulties, which a very intelligent State commissioner finds in respect to that matter. He says he is constantly against the determination of questions which are arbitrarily limited by the State line, whereas the transportation problem does not limit itself by those lines. At the same time, he says it is very important to have a local conception of all these matters; but if you could have some such body as you and I are referring to—some regional or district subcommission—whose jurisdiction would run according to the lines of transportation instead of according to the arbitrary lines of the State, he believes that his usefulness would be very greatly increased; and that is the view which has appealed to me.

Mr. CULLOP. If I have understood you correctly—and I think I have—it is your contention that the Federal Government has a right to regulate the intrastate as well as the interstate transportation, under the power of the commerce clause of the Constitution?

Mr. THOM. If it is done by an instrumentality engaged in interstate commerce.

Mr. CULLOP. Certainly. Now, if that power exists—and I think it is clear from the decision in Two hundred and thirty-fourth

United States that the court has settled that proposition—what is the office now of the State commissions, in the event the interstate commission or the Federal Government should take jurisdiction over that matter?

MR. THOM. If the Federal Government takes the jurisdiction over the matter, of course the State authority would cease.

MR. CULLOP. It would no longer have any functions to perform?

MR. THOM. In respect to the particular matter over which the Federal jurisdiction was constitutionally extended.

MR. CULLOP. Now, do you construe that to go far enough to regulate the police powers which the States have reserved in regard to the operation of roads, such as the building of depots, relating also to crossings and grades, and other things that are connected with the operation of railroads?

MR. THOM. My conception of the constitutional limitation is one thing; my belief as to the proper policy is another thing, in respect to the question you have just asked. My belief is that, constitutionally, the Federal Government would have authority to take entire charge of the instrumentality of interstate commerce in all its relationships. I think that is constitutionally possible. I do not think it is wise that that full authority should be exercised at the present time.

MR. CULLOP. Now, in regard to the bonding of roads or raising finances for them, have the States, through their commissions, attempted to exercise authority over interstate roads in relation to the bonding of them, so that the jurisdictions have been conflicting?

MR. THOM. Yes.

MR. CULLOP. There are already instances of that kind?

MR. THOM. Yes; a good many.

MR. CULLOP. You spoke the other day—

MR. THOM. You will find, if you are interested in the subject particularly, a very interesting case of the general power, in the Supreme Court of Maryland, where Maryland undertook to exercise that power in regard to the Baltimore & Ohio road.

MR. CULLOP. You spoke the other day of a certain amount of mileage that was able to refund or bond itself, and a certain number of mileage that was unable to bond or refund. I would like to hear you go over that a little more fully, and develop the idea more fully than you did the other day. I think you mentioned 185,000 that were unable to refund or bond themselves, and 49,000 that were. In other words, what is the cause of the inability of this great number of mileage? I might ask, further: Is it because it is bonded to its full value now, or is it the reckless financing or management of the road that prevents them from raising the necessary capital?

MR. THOM. What I said in the respect that you are now alluding to was this: I was referring to the power of the road to obtain new money; not for the purpose of refunding, especially, but new money for the purpose of creating additional facilities.

MR. CULLOP. An additional amount to that which they already have; is that it?

MR. THOM. Yes.

MR. CULLOP. That is what I wanted to bring out.

MR. THOM. Yes; and I was trying to explain the view that I entertain of the great desirability, if these railroads are to remain

stable, of being able to finance themselves by the issue of stocks, instead of bonds; and I stated that in order to finance by the issue of stock, the general view, as I understand it, is that the revenues of the roads must be large enough to pay at least a 6 per cent dividend on the stock, with a surplus of at least 3 per cent in addition, and that applying that test there were 39 railroads which have a mileage of 47,363 miles, which could probably be financed by the issue of stock at par; whereas under the same test there are 137 railroads, having a mileage of 185,219 miles, that could not be financed by the issue of stock at par.

Mr. CULLOP. Now, is that because of the overbonding or the territory that is penetrated by these roads, or because of the manner of financing them heretofore?

Mr. THOM. I think you will find the causes which have led up to that to be mixed causes. I do not undertake to deny—I do not in any way take the position that some of the objectionable things which have been done in respect to financing railroads have not had an effect on the public estimate of railroad management. Whereas these objectionable things, as I am informed, relate to only about 10 per cent of the mileage, I think that they have had an effect upon the public mind, but I do not think that that alone explains it. I think that after allowing for all of that there are other causes and other difficulties which have created insuperable difficulties. One of those is—and these things that I am now referring to have a vastly greater influence on the general view of the investor than the other matters to which I have just referred—that there is no power on the part of the investor, when he gets his money in, to control the amount of the earnings that will come from that property; that there is, likewise, no power, speaking in general terms, for him to control his expense. When those two things are brought together the very fundamentals of the desirability of an investment are involved. If you can not control either your income or your expenses, you find that your chance of success is very much limited, and when you find also that those matters are controlled—both of them—by considerations which spring from a willingness to publicly agitate the question, to determine it by political exigencies in any particular case, you find such a very serious situation created that the investor shrinks from entering that field of investment when he considers the attractions that may be open to him in other fields.

Mr. CULLOP. Has not a great deal of this distrust been created in the public mind through the manipulation of the stocks and securities of the railroads on the boards of trade and stock exchanges of the country? The bulling and bearing of the market?

Mr. THOM. I have no doubt that those things apply to railroad securities as they do to every other security. But let me say that I am entirely convinced that if there had never been any of them, if there had never been anything in railroad financial management that was criticized, if the record were absolutely clear and free from criticism, but there were left the conditions where the system of governmental regulation was repressive and corrective only, where there was no control over revenues and no control over expenses, you would find the same condition you find now in respect to the difficulty of financing.

Mr. CULLOP. Is there any good reason in your mind why the railroad stock or bond should not be as stable in the markets as that of any other staple product?

Mr. THOM. Yes; there is a very good reason.

Mr. CULLOP. I would be glad to hear you state what it is.

Mr. THOM. I have just stated that where the amount of your revenues is beyond your control no amount of industry, no amount of genius can affect the level fixed by governmental authority on your revenues, and no amount of good management can control the amount of your expenses; and therefore where the net earnings is so absolutely beyond the control of the man who puts his money into it there arises at once a reason of overwhelming consequence why the bonds and stocks of railroads should not be as desirable as the other character of investments to which you allude. If, however, Government concludes that the necessity for measures of correction and repression simply without anything else have passed and that there be the same cooperative spirit in the regulation of these enterprises of railroads as is in the banking system of the country, I believe that an immensely greater credit will be attracted to them.

Mr. CULLOP. Do you think these are the reasons which have occasioned the wide fluctuations in the values or sales of the stock of the same road which frequently occur in a very short period of time and without any reference to the earning capacity of the roads?

Mr. THOM. I think if you will watch the stock markets you will see that the fluctuations in railroad securities is nothing like as great as in other securities, and I think if you watch the stock markets in respect to the stock you will see that the sales are very much better. In other words, the spirit of the speculative public is one which makes wild speculation, and the spirit of the public in these matters is very much different.

Mr. CULLOP. Such wide changes and fluctuations do not occur in the stock of banks, trust companies, real-estate mortgages, and kindred securities; then, why is it that they do occur so rapidly in railroad securities?

Mr. THOM. I say I think your facts are wrong there. I do not think that the fluctuations in railroad securities are anything like as great as in many other classes of investment. You probably refer to some historic incidents when there were these great fluctuations; they occurred for special reasons. They have occurred not only with respect to railroad securities, but in respect to others. For every railroad stock that has had a history of great advance or great decline I think I can name some security of another class of industry that has had the same, and that now the wide fluctuations are in other classes of securities instead of in railroad securities, because they are practically neglected.

Mr. CULLOP. Have they not been neglected because of the distrust or the fear that the public has of them from former manipulations of them on the stock markets?

Mr. THOM. I do not think so. I have explained my view about that. I think if all that was withdrawn that the great fact which I have attempted to express here would control the matter anyhow, and in saying that I am not at all losing sight of the fact that in railroad finances, as well as in any other kind of finance, as well as in any other kind of business, there has been objectionable practices.

Mr. CULLOP. There have been very great abuses, have there not?

Mr. THOM. There have been abuses. They have been confined to a small area, however.

Mr. CULLOP. Do you not believe that confidence could be restored in the public mind so as to invite capital into this line of investment if there were provided a method for the issuing of stocks and bonds for railroads; for instance, that they could only be issued upon the filing of a petition with the Interstate Commerce Commission providing for what purpose, what amount, and regulating, fixing the minimum price at which they should be sold, so that the purchaser would know the purpose for which the additional finance was to be raised and that his investment would be applied to that particular purpose?

Mr. THOM. I think, Mr. Cullop, that is but one of the things to do. Of course you know that that is a thing that I think ought to be done. You have heard me say so before your committee often; you have heard me say so here. But that is only one of the things to be done. We have got to convince that investor not only that the Government approves of the issue of the special security and approves of all the other matters to which you have alluded, but you have got to convince him further that there is going to be a proper return on them, and unless you convince him of the latter he does not care how much you supervise the issue of securities; he will not take them, because what he is after is his return, and unless he is assured of that he will not invest.

Mr. CULLOP. The increase of rates reduces the amount of business or patronage of the railroad, does it not?

Mr. THOM. No, sir; the increase of rates up to a reasonable point would not reduce the volume of traffic. The traffic is not created simply by low rates. If there is a profit in the transaction of the shipment in question after paying the rate the traffic will move, and you have got to get a prohibitory rate before you reduce business. You do not get to the prohibitory rate by making a reasonable rate.

Mr. CULLOP. Take certain lines of products that bring a low price on the market, farm products, if the rates are low will it not invite traffic in that line of products?

Mr. THOM. It will not invite traffic in that line of produce unless—I will say it will not retard the movement of that class of traffic until you make the shipment an unprofitable one. As long as it is within the range of a profitable and attractive business to the farmer his product will move.

Mr. CULLOP. But, if the rates were lower, would it not inspire him to activities along lines of production that he would not now engage in at all? Many products on the farm can be raised without practically any additional labor. In the cities there is a demand for them, but the rates are such that he can not afford to ship them for the price they will bring, although they are desired in many congested centers of population. Now, if that rate was down to a lower figure where he could afford to produce and put on the market his product, would it not multiply business as well as revenues for the railroad companies?

Mr. THOM. I think the difference between the idea that is in your mind and mine is that you are using the words "low rates," just

simply low rates without the relativity in it at all. You say, would not a low rate bring about traffic. I say——

Mr. CULLOP. I should like to modify that a little.

Mr. THOM. Will you let me finish what I was trying to say?

Mr. CULLOP. Yes, sir.

Mr. THOM. I say that if the rate is low enough in relation to what the product will bring on the market it will do all that is necessary to stimulate traffic. The mere making a rate low enough to move the traffic anyhow and then lowering that rate which already moves the traffic, would not move more traffic. It is a question at last of the commercial merits of the proposition. Here is a farm product which on existing rates, is profitable for the farmer to send to market. Now, he will send that if it is profitable to him, and by cutting that rate in half he will not send any more of it, because he is already induced by the profitableness of the transaction to engage in the business. And I will say further that the farmer's interest is not in the low rate alone, or principally. What is his interest is to be able to get to the market on reasonable terms, and he wants facilities, and he is interested in that rate being high enough to guarantee the facilities, and he is interested in that vastly more than he is in just having rates indiscriminately slaughtered.

Mr. CULLOP. Now, there are certain products which can be raised on farms without additional labor, practically. They are a cheap line of products, much desired in congested centers of population, for food, but because of the rate charged for transporting them to markets, say a hundred miles, they are unable to produce and put them on the market. It seems to me that if a rate was fixed, without additional cost in transportation to the railroad company which is operating its trains, not to the capacity in many instances, of the motive power, it would add revenues to the roads, as well as relieve an embarrassing situation existing throughout the country, especially at this time, in the shortness of food products, and add very materially to the revenues of the railroads. I never could understand why railroads do not meet that situation.

Mr. THOM. I think you will find, Mr. Cullop, that they do meet it, and not only that, that if they do not meet it that Government has assumed the power of making them meet it. These rates are Government fixed. Now, I will give you an illustration of what you are talking about, I think. Suppose there is a manufacturer of tobacco that has 10 boxes that he wants sent down to the station and shipped, and he gets a wagon to take them, and that wagon comes along, but has space for 12 boxes instead of 10, and that the man who has the 10 boxes is willing to pay 20 cents a box to get them down there—\$2. Now, his next-door neighbor is a manufacturer of tobacco, too, and there is space in that wagon for 2 additional boxes, and he comes out and says, "You have got vacant space there, and I will give you 10 cents a box to take 2 boxes down." Now, you think that he ought to have the authority to carry those extra 2 boxes at 10 cents, because he has got the transportation capacity there. He is going to the station anyhow, but the result of that is generally this: That load now, under the supposition that I have made, will pay \$2.20. The result of that is this, that when this wagoner agrees to take those 2 boxes for 10 cents, the man who is willing to pay 20 cents a box says, "You must take all of my 10 boxes

for 10 cents. So that when he does that, instead of that load paying \$2.20, the load pays \$1.20. There are thousands of those situations that have to be taken into consideration by rate-making bodies; but we are discussing here the perfection of those rate-making bodies so that they will adequately respond to whatever the commerce conditions require.

Mr. CULLOP. Is it not the experience that the enactment of 2-cent fare bills in a number of the States has a tendency to very materially increase the revenues of the the railroads because of the reduction of passenger fares?

Mr. THOM. That is a very much disputed question.

Mr. CULLOP. It did increase the travel, did it not?

Mr. THOM. Some people think it did and some people think it did not. The general consensus of opinion is that while it induced some additional travel it reduced passenger rates so low that the passenger business was not contributing its part to the upkeep of the facility, and that the burden of keeping that up was on the shippers of freight; and the burden to an unjust extent was on the shippers of freight, so much so that the Interstate Commerce Commission has examined that question and has so declared and has directed the passenger fares to be increased.

Mr. CULLOP. But was it not a fact, at least in some jurisdictions, that instead of decreasing the revenues of the railroads or making it an additional burden upon the shipper, on the contrary, it did increase the revenues of the railroads?

Mr. THOM. Of course, I can not say what has happened in all of the jurisdictions. I do not know; but where it has been examined the contrary effect has been declared, and the representatives of the public have directed that the passenger rates be increased.

Mr. CULLOP. Now, the operation of trains—the expense has been very materially reduced by more powerful facilities, has it not? For instance, formerly one engine would pull a train of 25 freight cars; no car in that train would have a capacity of more than 28,000 pounds. Now, one engine, with the same number of men in the crew, will draw a hundred cars, with a capacity running from 50,000 to 150,000 pounds in each car. The same number of men man a train of the increased capacity that were required to man the train of smaller capacity. Has not a great saving been brought about to the railroads in the working of this reform or increased efficiency?

Mr. THOM. I think it is one of the greatest tributes to railroad management that in the face of their increasing costs, their larger expenditures for labor, of their larger expenditures for materials, of their greater facilities which the public was demanding, the better roadbeds, heavier rails, larger yards and terminals, that they have done everything that human inventive genius would permit to decrease the cost by adding to the tractive power of the engines, by adding to the character of their facilities, and the result has been in the direction that you state, to enable them to carry a unit of freight at a lower cost for the charges that I am alluding to; but the general opinion seems to be that about the limit of tractive power of engines has been reached. Of course, you realize that when you get to the larger tractive power of engines you add to their weight. When you move 100 cars in a train you add to its weight, and that involves also very much heavier and stronger rails and

roadbed, and that also requires greatly strengthened bridges to carry those cars. Now, everything that railroad people have been able to think of has been done in that direction, and their achievements have been very great. The result is that their expenses do not stand where they were before these improvements were introduced.

Here comes along a demand for \$50,000,000, perhaps, for increased wages, and the other classes of things that I have alluded to have added to their expenses. They are not making anything like the same progress in enlarging their net earnings that these things would have effected if other things had stood still, and the result I am telling you about is not the result back yonder before these things were done, but the result after they were done. It is a condition that confronts the country to-day, notwithstanding the introduction of all of these great advances to which you have alluded, and something seems necessary to be done in order to insure the public the facilities if they are to be furnished in the way they have heretofore been furnished.

Mr. CULLOP. Now, were not all of these increased facilities economies to the railroads, instead of adding to the expense? For instance, they now have steel cars. The steel car lasts much longer and endures much greater service than the old wooden cars did. The heavy rail is more durable and more lasting than the light rail was which was used in the earlier period of railroad building, and in the end does it not make the operation of the roads cheaper than formerly, because of these economies in the use of more durable material for the operation of the trains?

Mr. THOM. Not when you consider all of the increases that have come in other matters. Now, it may be—

Mr. CULLOP. Now, we are getting to where I wanted to get. Have not the increases come in high-salaried officers—presidents, vice presidents, general managers, and lines of that kind? Do you think any railroad president in this country is worth \$100,000 a year to that road, or to that investment, and do you not think that that is an imposition upon the man who invests his money in that property? Could he get that at anything else that he would be employed in, and does not he get his position through favoritism, by the manipulation of the management of the road in his selection?

Mr. THOM. Now, Mr. Cullop, I do not suppose you have at all investigated that matter, if you ask such a question.

Mr. CULLOP. I may not have, but I am trying to get information on it.

Mr. THOM. Do you know what a very small percentage of all the expenses of a railroad is involved in the matters that you have alluded to, and that you might wipe them all out?

Mr. CULLOP. I concede it is small, but it is that much of the revenue that is being consumed.

Mr. THOM. Now, just let me answer your question. You asked me a question; let me answer it. I will say to you that if everyone of those officers worked for nothing, and gave their time and their skill, with the same enthusiasm and earnestness that they give it now, it would not affect this problem at all, because the amount actually involved is so very little. Now, as to whether there is any railroad president in the United States getting \$100,000 a year, I do not know; perhaps you do. I have never heard of any.

Mr. CULLOP. I do not know.

Mr. THOM. Then, why do you say so?

Mr. CULLOP. I have understood so.

Mr. THOM. Exactly. Now, I do not know, and you say you do not know it; but I venture to say this, that the railroad presidents of this country have been selected, not out of favoritism, not out of manipulation, but because of the belief on the part of the people that selected them that they were the best men for the job and that they could give much more than the salary that is paid in the management of those tremendous affairs.

You can not get a man that is too big for the responsibilities of trying to make a success of the facilities which he is using in the public service in this country on these railroads. It is a tremendous job, and the reason that they get such salaries as they do is because of that belief and not because of favoritism and manipulation. Of course, I am speaking generally. I have no particular cases in my mind, but that has been my observation of these matters.

Mr. CULLOP. Now, is not some of the mistrust—

Mr. THOM. (continuing). And the men who have done so have usually come up from the ranks, where they had no favoritism and where they have hewn their own way by the things they have shown they could do.

Mr. CULLOP. Do you think any of the mistrust that now exists, of which you speak, in the minds of the financiers was created because of the manner in which supplies for railroads and the operation of the properties owned by the same stockholders a few years ago—for instance, take coal mines: It was a common habit of a number of men who had the management of a railroad in hand to buy up a large acreage of coal land and open coal mines. Their connection with the railroads, of course, gave them favorites—favoritism that the independent operator could not get, until in some localities they worked very greatly to the detriment of the independent operator, and in some instances put them out of commission.

Now, do you think that those things had anything to do with creating the distrust in the minds of the financiers that made them hesitate about investing in railroad securities?

Mr. THOM. I think wherever anything of that sort has been disclosed it has been condemned. But I think you might wipe them all out and you would still be confronted with the problem you are to-day; and they have not had sufficient influence upon the investors to prevent them from going into these investments, if they were otherwise assured by a proper and cordial Government control.

Mr. CULLOP. Would they—

Mr. THOM. Now, right there, in that connection, let us get the value of that idea in its relation to the duties imposed upon you gentlemen on this committee. Let us get that. If it is to have any decisive bearing upon the problem which you are to decide, we would have to determine that those things now exist to an extent that if they were all wiped out your problem would be solved. Now, I do not believe that to be the case. I believe, however, that the existence of those things in the past does justify a retention in your system of regulation of powers adequate to deal with them, if any of them continue to exist or any of them appear in the future. We think that

fully. But I believe your problem goes far beyond that. You are confronted not now with the necessity of removing abuses—because I believe everybody admits that the laws are adequate to that purpose now—but you are confronted with the problem of assuring to the commerce of the future, as well as to the present, adequate facilities, and your task will not be done by simply talking about abuses, because you get nowhere, for the people you represent, as to the future, when you talk merely about abuses. You have got to go beyond that, and say, “We will remove all the abuses, but we will not be content with that; we will assure to the American public sufficient transportation facilities for their present commerce, and their commerce as it grows in the future.”

Therefore I have attempted to try to give the proper value to what you have stated, and what I have heard otherwise in respect to abuses, but to not let that in any way obscure the real thing that is before the statesmanship of this country, and that is to provide an adequate transportation facility system, with adequate facilities for the needs, not of the railroads, but of the public that you gentlemen represent.

MR. CULLOP. But in order to get the public to understand what the future work is to be, in preparing the way for giving assistance to this great question, the public must understand what the abuses have been, so that adequate means can be provided to prevent their recurrence. Now, along that line, was it not a fact, with reference to some of the coal properties that I have spoken of, owned by many roads, that when there was great demand for coal, in large cities, the cars of the companies hauling coal from these mines were used as storehouses? In other words, they kept their coal in the cars and kept the cars out of transportation for periods of time—sometimes two or three weeks. Were you acquainted with that condition that occurred with some roads?

MR. THOM. I am not more acquainted with that than any other man who reads the newspapers. There are vast numbers of railroads in this country which are not coal roads. There are a vast number of roads in this country which are coal roads of which that can not be said. It may be said of some, but I wish to present to your minds the thought that the thing which is now in the way of the investors is not those matters which the general belief in the country is to the effect have already been adequately attended to by the lawmaking power, but it is the attitude of the lawmaking power that will not recognize the necessity for adequate net returns in order to be a basis for proper credit for these carriers.

MR. CULLOP. But was not management of this kind one of the material things that prevented roads from making earnings so as to make their stocks attractive to the public?

MR. THOM. Not as I know of, but I do not see how it affects earnings; but if it did, then, since the investigations which are in your mind took place, these matters were years ago discarded as methods, and yet we still find this difficulty about earnings. We still find in the public mind the idea that every time you speak of a railroad somebody gets up and talks about abuses and punishment, and the investors are not going into an industry where the men who control its destinies are all the time talking about punishment and all the time talking about correction, and never a word of help. It is not going to—

Mr. CULLOP. But if you will remove the abuses help will then voluntarily come. That is one angle of looking at the matter. Now, let me ask you, are not the railroads now carrying more commerce at a better price than ever before in the history of the railroad business in this country?

Mr. THOM. The war in Europe has stimulated an extensive addition in the commerce of this country, and I do hope that the mistake will not be made of basing the system of regulation which is to apply in all times on the exceptional conditions created by this great world catastrophe.

Mr. CULLOP. Are not the men who operate those industries making preparation for greater business after the war than they are now doing? Are not all of the large industries of the country increasing their capacity, extending their plants; have they not taken survey of what the future will be in Europe and in this country, and expecting to do a much larger business in the future than they are doing now?

Mr. THOM. I thought it was a matter of profound uncertainty in the public mind as to whether or not there will be an increased business after the war. I thought the general conception was that it would likely not be, and every time you talk about peace you will find a cold shiver go down the backs of these men who have enlarged their plants.

Mr. CULLOP. They are enlarging them, are they not?

Mr. THOM. Some of them—I do not know whether they are now—but some of them did for war purposes.

Mr. CULLOP. The Bethlehem Steel Works made a very large addition, costing something like \$90,000,000?

Mr. THOM. I know nothing more about that than you do, from reading in the newspapers.

Mr. CULLOP. I saw the interview of the head of the institution. Now, certainly he is not unwise enough, in view of his conduct, to expect the bottom to fall out of the business after the war?

Mr. THOM. And neither do I expect the bottom of the business to fall out after the war, but I expect very great changes in the economic conditions relating to business after the war, and I can not tell what it will be. We can not tell what will be the opportunities for our products to get in the markets of the world after the war. We do not know what their buying capacity will be, and we know nothing and will know nothing until at the end of the war. One man will come along and say, "I think there will be great need for steel after the war, because of the great destruction, and I will take that side of the proposition"; another man of equal judgment may say, "I do not know that we will control that business after the war. It may go to another country." There you are. Everything is an uncertainty.

Mr. CULLOP. Taking the situation as it appears now, with the number of men that have been put out of commission there because of the war, the destruction of manufacturing plants, the exhaustion of their finances in the war—waste—would it not appear most reasonable that the business of this country, the commerce of it, would necessarily increase very largely after the war is over, because the fellows in the trenches over there will not arise to produce any more?

Mr. THOM. No; but, Mr. Cullop, you have got to consider the vastly increased efficiency of the men and the nations who have gone through this great discipline. You do not know what it will be. You know you have got men who have been taken away from luxury, who have known all the discipline of need and all the discipline of self-control, and you are going to put them back, as a force, to rebuild the civilization of those devastated countries. Now, what they are going to accomplish we can not tell, but we do know that those men will accomplish more than they would if they had not gone through that ordeal.

Mr. CULLOP. But it will take——

Mr. THOM. But I want to say this: I want to say that for us to establish our system of government—I mean, rather than our system of government, our policies of government—upon a war basis of business, would in my opinion be the most short-sighted policy you could get up.

Mr. CULLOP. I agree with you on that. I am speaking——

Mr. THOM. Now, when we are talking about more business and more earnings, we get back at last to what we are talking about in the main in this investigation, and that is a perfected system of transportation, and are we to base that, as sensible men, on the exceptional conditions brought about by the great commercial changes incident to this war, or base it upon the average conditions which will apply in the future, in time of peace?

Mr. CULLOP. Now, one of your plans for assisting business is the national incorporation of railroads, as I understand you.

Mr. THOM. I think that would be the most beneficial.

Mr. CULLOP. In view of the fact that the Federal Government now has the power to regulate both interstate and intrastate charges on commerce, what additional assistance would the Federal incorporation be over the present plan other than the one of making it easier to handle in the financing of railroads?

Mr. THOM. I think it would simplify the whole subject of regulation and would assure a national policy on all the matters that would affect the destinies of railroad investment.

Mr. CULLOP. That would be the real benefit in it, in your opinion?

Mr. THOM. I believe that you can handle this great question, divided up in authority, with different sources of power in different roads, and with a different measure of what they may do in a corporate way. But where you have to organize this country now you have got to make it efficient. You have not got one railroad handling a part of your interstate and foreign commerce with very limited corporate powers, and another with ample, because you do not want a limitation upon your agents. You want the power to determine the entire corporate capacity of your instrumentality of interstate commerce, and you can not do that except through national charter.

Mr. CULLOP. Now, the national-charter plan will be very strongly resisted or opposed by the States, because it would deprive them of a source of great revenue, would it not?

Mr. THOM. I do not think so. What do you mean by the revenue? I have not got that in my mind.

Mr. CULLOP. Well, nearly every State in the Union charges a percentage for the granting of a charter, a certain per cent of the capitalization, which makes quite a great revenue to the States. Otherwise by national incorporation the States would lose that source of revenue, and hence would be, for that reason, if for none other, opposing the change of plan.

Mr. THOM. I did not know that that was a very great revenue; but if it is, somebody has got to pay it. Now, who is going to pay it? Is it a proper charge to put upon the general public or other States, where one State can create that burden as a condition of incorporation, or is it better, when we are trimming down everything and putting every little stone in its proper place in the mosaic we are trying to create, not to have unnecessary tribute paid anywhere, not to have unnecessary burden put anywhere, because you are accounting for every cent of your revenues, and where your expenses are made greater. In order that some State may have the opportunity of charging for its franchise you have got to put that expense on some part of the public, either in increased rate or in impaired facilities.

Mr. CULLOP. I believe that is all I care to ask.

The CHAIRMAN. Senator Cummins, will you take the witness?

Senator CUMMINS. In order to avoid any misinterpretation of the questions I intend to propose, I desire to say that I have for a long time favored, and I now favor, the very substantial enlargement of the scope of Federal control. But there are certain phases of the matter concerning which I want to secure Mr. Thom's opinion, and in order that I may conduct the examination intelligently I will state what I understand to be the argument made by Mr. Thom. First, that the capital required for the proper enlargement and coordination of transportation facilities can not be secured unless there are (a) better assurances of the safety of the investment, (b) greater certainty of adequate profit. Have I stated, so far, the argument correctly?

Mr. THOM. I think I made that argument just as you have stated it, Senator.

Senator CUMMINS. Second, that such assurance and such certainty can be established only by creating an exclusive Federal system of regulation for interstate carriers in all matters which affect the interstate service rendered by the carrier. Am I still correct?

Mr. THOM. Will you read that over, Senator? There is one part of it that I did not get.

Senator CUMMINS. That such assurance—that is, the assurance of safety—

Mr. THOM. Yes.

Senator CUMMINS. That such certainty—that is, the certainty of adequate return—

Mr. THOM. Yes.

Senator CUMMINS. Can be established only by creating an exclusive Federal system of regulation for interstate carriers in all matters which affect the interstate service rendered by the carrier?

Mr. THOM. Yes, sir; that is correct.

Senator CUMMINS. Third, that the most effectual way to accomplish the desired object is to enact a general law for the incorporation

of interstate carriers and require all such carriers to incorporate under it?

Mr. THOM. Yes, sir; that is part of the argument I made, but that is not the whole of it.

Senator CUMMINS. Certainly; I am speaking of that part of it about which I intend to interrogate you.

Mr. THOM. Yes, sir.

Senator CUMMINS. It has been assumed by yourself and by some members of the committee that the present system has practically broken down, and that facilities for the future can only be secured in the way I have indicated. Mr. Thom, what is your definition of a confiscatory rate?

Mr. THOM. My definition of a confiscatory rate? Do you mean my own or the one under the law, as I see it?

Senator CUMMINS. I would prefer your own.

Mr. THOM. Well, the one which is my definition of confiscatory rate is any rate less than a reasonable rate for the service rendered.

Senator CUMMINS. Without regard to its effect upon the revenue of the company charging it?

Mr. THOM. I say that would be my own definition.

Senator CUMMINS. Yes.

Mr. THOM. I do not mean to say that is the one universally accepted.

Senator CUMMINS. That is, there may be rates, then, which will make no returns upon the value of the property rendering the service that will, or may be, reasonable rates.

Mr. THOM. That is my individual view. I think the road may be situated in such an unfortunate location and so expensively administered that the charge of reasonable rates on it would not make any return on the investment.

Senator CUMMINS. Is it your view that the investor looks at the subject from that standpoint?

Mr. THOM. No, sir; because the investor has been taught differently from the way in which the rule has been applied.

Senator CUMMINS. It is true, is it not, that when a man is thinking of investing money in railway securities he thinks first of the safety of the investment—that is, the probability of securing a return of his principal—and, secondly, of the interest upon the investment that he is likely to receive from year to year?

Mr. THOM. Yes; those are the things that control him—the safety of both his principal and return, and the amount of his return.

Senator CUMMINS. He wants to know that there is a reasonable probability, anyhow, that when he desires to do so he can recoup his capital—that is, can sell his securities and retake his principal—and so long as he remains the owner of the security that he will receive adequate or reasonable interest upon his money?

Mr. THOM. Yes.

Senator CUMMINS. And those two things being fairly well assured to him, he will invest in any security that has those characteristics?

Mr. THOM. The class of the public that is looking for a safe and reliable investment will invest in that. The speculative man will not.

Senator CUMMINS. Certainly. Now, the only evidence or facts—I will put it in that way—that you have submitted to the committee bearing upon the disinclination of men of money to invest their means in railway securities is that during the last year only about a thousand miles of railway have been constructed?

Mr. THOM. Oh, no, sir; that is not all.

Senator CUMMINS. What other facts have you submitted?

Mr. THOM. The other facts which I have submitted are that the public does not favor investing in railroad securities any longer, and I propose that there shall be a great many witnesses here who will show that fact.

Senator CUMMINS. That is your opinion, is it not, rather than a fact?

Mr. THOM. No, sir; it is a fact whether or not the public now seek or avoid railroad investment.

Senator CUMMINS. How do you know that the public is not willing to invest money in railway securities?

Mr. THOM. Because I get it from the people who are in the investment business, and we expect to have them here to testify.

Senator CUMMINS. What company has endeavored to sell railway securities and failed?

Mr. THOM. Oh, that is another question entirely. They have, however, not sold the character of railway securities that will not consume the margin of safety; and there is another fact that I presented here, namely, that the recent financing of railroads, in the last 16 years, has involved an increase of about 1 per cent a year, or about 16 per cent in the additional fixed charges, instead of the proportion between stock issues and bond issues being maintained.

Senator CUMMINS. But you assert that we are not going forward to care in a proper way for the commerce of the country. As I understood it, you said that during the last year we had built but a thousand miles of railroad.

Mr. THOM. That is one of the facts.

Senator CUMMINS. Do you know of any company desiring to build additional railways that has failed to secure the money necessary to do it?

Mr. THOM. I think the companies have come to the conclusion that it is an unattractive deal.

Senator CUMMINS. I asked you, Do you know of any company that has endeavored to secure capital that has failed in the attempt?

Mr. THOM. I do not know it. But I add that that question of the result can be affected in two ways, one by the company not attempting to do it and the other by the company coming to the conclusion that the field is not attractive enough to attempt to do it, and that it would better put all its financial energies in increasing and improving the property it already owns.

Senator CUMMINS. I want to be perfectly sure about one fact, namely, do you know of any company that believed a railway ought to be built and has endeavored to build it and failed to secure the capital?

Mr. THOM. I personally do not know, but I do not know that there are none. I do not know one way or the other about that. I only know the fact that whereas heretofore there has been a large increase in the mileage each year of new roads—

Senator CUMMINS. But there may be other reasons for the failure to enlarge railway facilities than the inability to secure the capital to construct?

Mr. THOM. I have been thinking of that, Senator, and when I consider the vast regions of this country that are in need of new railroads just as much as they have been in the past, and there has been no extension in them, I can not believe that the result has been brought about by anything but the feeling on the part of investors that the field is no longer attractive.

Senator CUMMINS. But that is merely argumentative. I wondered whether the cessation of railroad building in a measure was due to the fact that people were unwilling to invest their money in such enterprises or whether it was due to some other cause.

Mr. THOM. I think it is due to the fact that railroad investments are no longer attractive. Now, that is an opinion.

Senator CUMMINS. But do you not know of any company that has sought to secure the capital and failed?

Mr. THOM. No, but I think I can see a sufficient reason from what I know of railroad conditions to show why there would be nothing of that sort advocated by railroad managers.

Senator CUMMINS. What is your test of the necessity of additional railroad facilities?

Mr. THOM. I would say that where the territory is promising enough in respect to its products, agricultural, mineral, or forest, or any products, to make transportation necessary, that then it would be an attractive field, but of course there is a relation between the cost of the enterprise and the amount of traffic that will be produced, and when you get to the point of where there is a reasonably assured traffic that will pay the return on the investment, I think there you have your attractive field.

Senator CUMMINS. You recognize, do you not, that with the railroads as they are now located and the markets as they are now established, that the railroad building of the future must be practically carried on by established railroad companies?

Mr. THOM. I believe that to be the fact, Senator. I think we have got to rely in the future on the extension of present systems rather than the building of new systems.

Senator CUMMINS. Inasmuch as substantially every extension into a new territory must rely upon transportation of an established line there is really no inducement for an independent company to endeavor to exploit or to develop a new territory, is there?

Mr. THOM. Well, there are some, but I believe that is a disappearing force. Now, heretofore we all know that a railroad could build into a new territory and make itself so disagreeable that it would have to be bought out. I believe now that situations have been materially altered by the public conception of such matters, and that hereafter, as you have stated it, the great thing we have to rely upon to develop new territory is for existing systems to extend into them.

Senator CUMMINS. That is so long as private ownership continues the extensions into new territory must, practically speaking, take place through the established lines?

Mr. THOM. Must for the most part.

Senator CUMMINS. Do you know of any instance in which any established line of railway desired to build new tracks into a new territory and could not do it because it could not get the money?

Mr. THOM. No, but I feel entirely justified in saying that their judgement of whether or not it was desirable to build into new territory has been affected by railroad conditions as established through regulation, and that that feeling of extension would reappear if they could be assured of helpful Government action.

Senator CUMMINS. This feeling, however, has been in the minds of railway managers. They have not sought the minds of the railway investors, have they?

Mr. THOM. Oh, I suppose they have discussed those questions with the representatives of railroad investors, undoubtedly. I have no idea in the world that they have shut themselves up like clams and have not considered the usual avenues of securing money.

Senator CUMMINS. I suppose I have already asked you the question, but I repeat it, do you know of any instance in which an established line of railway desired to extend its tracks through new territory during the last year?

Mr. THOM. You have asked that and I answer again that I, personally, have no knowledge of such an enterprise as that having been offered to the public and having failed.

Senator CUMMINS. What do you regard as the test for the necessity of an enlargement of the facilities of a transportation company in territory already occupied?

Mr. THOM. The test is whether the transportation company is able to carry forward promptly all the traffic that that territory can properly produce.

Senator CUMMINS. Is it your view that without regard to the ebb and flow of traffic—I say the ebb and flow of the volume of traffic—that the railway company should be prepared at all times to take care of any traffic that may be offered to it?

Mr. THOM. Oh, no; that they should be reasonably prepared for any traffic that they can foresee, and one of the greatest functions of a railroad management is to form a just and reasonable conception of the needs of the public as they develop and to have its facilities ready when the time of necessity arises.

Senator CUMMINS. It is true, is it not, that within two years that the facilities we now have were more than sufficient to take care of the traffic?

Mr. THOM. If you mean the rolling stock we have now.

Senator CUMMINS. I mean all the facilities of the railway companies.

Mr. THOM. They were in the low condition of business adequate, but we do not have a mere ebb and flow in business. There is, notwithstanding the ebb and flow to which you allude, there is always progress to an enlarged commerce, to a necessity for greater facilities, and that is the thing that has to be provided for.

Senator CUMMINS. You are familiar with the traffic movement of the last five years, fairly so, I assume.

Mr. THOM. I do not know; I suppose I am just like any other man.

Senator CUMMINS. In what years of the last five has it been found that the railway facilities were insufficient?

Mr. THOM. I have those years in mind. I know the fact that, taking a large view of the question, we can trace through a series of years a percentage of increase all the time. Sometimes that increase is accentuated by special conditions; sometimes it is depressed below the average by special conditions, but there is the consequent growth, if you take a large view of it, and do not take it from year to year.

Senator CUMMINS. Do not understand me to controvert the statement that under the present system, since we began to regulate the railways in 1887, the volume of the traffic has quadrupled or more, has it not?

Mr. THOM. I should say so; yes, sir.

Senator CUMMINS. And it is to be hoped, of course, that over long periods we shall see a like increase in the future. But there always will be, in the natural course of affairs, some years in which a part of the facilities will not be demanded and other years in which the facilities will be inadequate?

Mr. THOM. That is inevitable.

Senator CUMMINS. And it would not be either economical or wise to enlarge our railway facilities so that they could always promptly care for the peak of the load in a particular month?

Mr. THOM. No; that is not necessary nor do I feel that under any system of regulation it will be attempted.

Senator CUMMINS. You have already stated that the present year is abnormal, have you not?

Mr. THOM. Yes, sir.

Senator CUMMINS. And you adhere to that?

Mr. THOM. Oh, yes.

Senator CUMMINS. So that, unfortunate as the fact may be that we are not able to expeditiously carry all the commerce that is now offered, that is no proof that there is any serious inadequacy in railway facilities, is it?

Mr. THOM. That is no proof that there is any inadequacy in the railroad facilities which ought to be provided against, standing alone, but I do think that you will find it will develop that the railroad facilities would have been very much better to meet the situation if there had been a normal opportunity for the railroads to look forward.

Senator CUMMINS. Mr. Thom, how much independent capital—by independent I mean aside from the earnings of the railways—has been invested in railway property in the last five years?

Mr. THOM. I think between six and seven hundred millions a year.

Senator CUMMINS. What amount of earnings have been invested in betterments and enlargements, not included within the ordinary phrase of maintenance and operation?

Mr. THOM. I can not tell you that. I have not the figures.

Senator CUMMINS. You can not remember, or possibly you have never inquired?

Mr. THOM. No, sir; I do not know the fact.

I should like here to put into the record some figures for the year 1915. The reason I have them is because of a question asked by Judge Sims the other day in which he spoke of the billion of dollars of earnings and why they could not be put in the properties.

Mr. SIMS. Net earnings.

Mr. THOM. Yes; for the year 1915 those figures are these——

Senator CUMMINS. You are speaking now of earnings invested in enlargements and betterments of property, are you?

Mr. THOM. I am coming down to that figure of a balance, but I just want, if you will let me, without interrupting your examination, to put these figures in. They are as follows:

Net income from operations for the year ending June 30, 1915, from the railroads reporting to the Interstate Commerce Commission was \$688,953,248. Income from securities owned by those railroads, \$129,374,047, making an aggregate of \$818,327,295. Out of that there was paid in interest \$463,540,666, leaving a balance of \$354,786,629. Dividends paid \$209,520,420, or 2.4 per cent on the outstanding stock, leaving a balance of \$145,266,209. It may be that balance went into improvements.

Senator CUMMINS. You understand, I assume, that those figures are not accepted generally, are they?

Mr. THOM. I do not know what you mean.

Senator CUMMINS. I mean this: That it is charged and, I think, is rather satisfactorily proven, that during certain years of the last five the railway companies have taken from their earnings and invested in permanent improvement of their property, aside from ordinary maintenance, a very much larger proportion of their earnings than they ordinarily do.

Mr. THOM. I had not been advised of that controversy; I had not heard of that.

Senator CUMMINS. You know, do you not, that it is was very earnestly contended in the Advanced Rate cases that the railways had unduly and unreasonably expanded their so-called "maintenance accounts"?

Mr. THOM. No.

Senator CUMMINS. And in that way had disposed of a large sum of earnings that ought to have been reported as applicable to the payment of capital—I mean, a return on capital?

Mr. THOM. I was not acquainted with that controversy. Perhaps it is as you state. I assume that the Interstate Commerce Commission's system of accounts was intended to reveal everything that was done.

Senator CUMMINS. The figures you have just stated are taken from the reports of the railway companies, are they not?

Mr. THOM. On the system of accounts that the Interstate Commerce Commission requires.

Senator CUMMINS. I know, but that system permits of great latitude in discretion with respect to the application of earnings, does it not?

Mr. THOM. That system reveals every cent that is spent and the purpose for which it is spent. One thing of which we can rest assured is that there are no longer any secrets in the railway world.

Senator CUMMINS. I am not accusing the railways of anything criminal or of violating the law, but I assumed that you were familiar with the controversy with respect to the application of earnings that arose in the Five Per Cent Rate case, and in other cases, too. Mr. Thom, if investors are frightened now about railway invest-

ments, does their fear arise from past regulations or from apprehension with respect to future regulation?

Mr. THOM. I think it arises from both.

Senator CUMMINS. If it arises from past regulation, is it founded upon the idea that the railway companies have not been permitted to earn a fair, reasonable revenue?

Mr. THOM. I think that the public believe that regulation has been heretofore applied so as to give the cheapest possible rate, without any reference to the larger view of the public interest in a surplus fund sufficient to secure the credit of the carriers and the future supply of facilities.

Senator CUMMINS. Your answer, in a paraphrase, is simply an affirmative one to my question, is it not?

Mr. THOM. I do not know.

Senator CUMMINS. That is to say, that you have said, substantially, that the fear so far as the past regulation is concerned arose out of unfair regulation in reducing rates or in not permitting the railway companies to charge adequate rates?

Mr. THOM. I do not use the word "unfair." I think it has been a misconception on the part of the public of the two functions of regulation. I think that heretofore the public eye has been alone upon the question of railroad abuses, the necessity for their correction, and the desirability to get the least possible rate, whereas there has been much more involved, and that is a provision for the facilities for the future; and you can not get them without furnishing a proper basis for railroad credit.

Senator CUMMINS. However carefully you may reflect the public opinion in the answer you have just made, it is, at the same time, a very serious impeachment upon the intelligence and justice of the Interstate Commerce Commission, is it not?

Mr. THOM. I do not intend to make it so. I think it is a perfectly legitimate comment, that that has been the conception——

Senator CUMMINS. Do you mean to say that the Interstate Commerce Commission——

Mr. THOM (continuing). In the minds of the regulating authorities on the subject, and I am not going to be put into the position of making a criticism on the Interstate Commerce Commission unjustly.

Senator CUMMINS. I do not want you to do so, unless you mean it.

Mr. THOM. Well, I do not mean it in any sense to reflect upon them. I think it has been the spirit of regulation.

Senator CUMMINS. We selected an Interstate Commerce Commission supposedly of intelligent and patriotic men. Now, do you mean to affirm that there has been absent from their minds the necessity of the development of our railway facilities, so that the commerce of the country could be served?

Mr. THOM. I think they have not taken due care of that, nor do I think Congress has taken due care of it; nor do I think the public mind has taken due cognizance of that, and we are all justified in bringing forward any phase of an idea that we think has been neglected.

Senator CUMMINS. Perfectly justified.

Mr. THOM. And that is all I am doing. I am not doing it in any spirit of criticism or antagonism. I am doing it merely for the value of what this angle of view may be to our common destinies.

Senator CUMMINS. But, after all, your position is that the commission to which we have delegated the power to revise rates, has failed to think of the future, and has imposed rates upon the railway companies which have driven investors out of the market; that is the substance of your position, is it not?

Mr. THOM. Well, Senator, no matter what invidious form your question may attempt to put upon my answer—and I do not think it is fair to try to put any, because I am simply here bringing forward in as considerate and as fair a way as I can, the idea, without particularizing any part of the governmental machinery of regulation, that regulation itself has not heretofore duly considered the needs of the future.

Senator CUMMINS. Yes.

Mr. THOM. Now, I do not mean that in any sense that would be unpleasant to anybody, but I do mean it as putting before you gentlemen, charged with your responsibilities, that thought for you to see whether or not there is anything in it.

Senator CUMMINS. I can well understand how people who think on the subject superficially may not consider that phase of it, but it is utterly impossible for me to understand how a commission composed of intelligent, thoughtful men could fail to give that subject all the consideration that it deserved.

Mr. THOM. They may arrive at a conclusion, under one presentation of the subject, different from what they would under another, and their conclusion may not have dealt successfully and adequately with the public needs for the future.

Senator CUMMINS. That may be.

Mr. THOM. That would be then merely this: I am not going to be put in the position of attempting a criticism of the motives of that body. I have got a right to bring forward the thought that the policies of regulation in this country have not taken sufficient note of this important matter, and that is all I do.

Senator CUMMINS. But it seems to me that in order to be—

Mr. THOM. Now, you may think that you had better just take as a whole what the Interstate Commerce Commission has done, and never question that, and never look beyond that, and you may say "Mr. Thom is wrong about it." I may be wrong about it, but I am bringing it forward with the proof which we will have to support it, to see whether or not I am right about it. I believe I am right about it.

Senator CUMMINS. What I am suggesting is that there is a difference between a failure to consider that phase of the subject, and a failure to deal with it adequately. Now, if you had said that the Interstate Commerce Commission had compelled the railways to render their service at a rate that will not provide for the future, that would be a mistake on their part, if true, in my judgment, as to the rates that were necessary for that purpose; but when you assert that Congress and the Interstate Commerce Commission have not thought of the future, it seems to me that is rather a serious situation.

Mr. THOM. I have not said that. I have not said that. All that I have said is that, in my judgment, whether thinking of the future

or not—and, of course, they have thought of the future—that they have not given sufficient weight to the considerations which I am now bringing to your attention. Now, is not that a legitimate thing to say to anybody of a public commission?

Senator CUMMINS. Yes; I think that is legitimate, in a way; and all that means is simply that the Interstate Commerce Commission has not permitted the carriers to charge a sufficient rate to take care of the future, and that, as it seems to me, is a peril of the days to come just as menacing as the peril of the days that are past.

Mr. THOM. Undoubtedly.

Senator CUMMINS. For we can not do anything that will change that situation, unless we change the Interstate Commerce Commission and get other men there.

Mr. THOM. Oh, I do not think that is necessary. I think you want your law changed. I think you want the spirit of the Government defined in such a way as to bring about a confidence that the public now, as represented in its chief law-making body, appreciate conditions in a way that will insure a cordial and friendly attitude toward anything that can be justified in the future. Now, I tried to show you that the spirit of the present law was the terms that were imposed upon the vanquished, created by the victor. I think that is true.

Senator CUMMINS. You have developed the genesis or origin of regulation.

Mr. THOM. Now, I want to plead with you to get into this law an assurance of governmental attitude which will give to the investing public confidence.

Senator CUMMINS. What I can not understand is this: How we can, by legislation, change the spirit of the people or the spirit, if you please, of the commission. We have delegated to the commission the authority to establish reasonable rates for the service. Now, they have gone forward, and, in so far as they have acted, they have established reasonable rates. Now, what can we do to correct the spirit of the commission in the work that they are about to do?

Mr. THOM. I do not like you to put it in the way of correcting the spirit of the commission. I am not making any attack on the Interstate Commerce Commission.

Senator CUMMINS. Whose spirit is it, then, you want corrected?

Mr. THOM. I am talking about your system of regulation, generally, and I believe that on the lines which I have advocated here you can put into that system of regulation certain ideas of encouragement and assurance to the investing public that will be of great benefit. Now, what good does it do to get me down to a possible criticising of the Interstate Commerce Commission? I am not assuming that position.

Senator CUMMINS. Every man has that right.

Mr. THOM. Why try to put me in that position?

Senator CUMMINS. I think what you have said is a criticism of the Interstate Commerce Commission.

Mr. THOM. So far as I have said, it has to go. Why do you want to emphasize that and bring out, as if I were in antagonism to them, when I tell you I am not?

Senator CUMMINS. Personally, I am sure you are not; but we can not do any more than to say to the Interstate Commerce Commission, "Fix reasonable rates for the service rendered by the railway companies."

Mr. THOM. Yes; you can.

Senator CUMMINS. Can we say, "You can fix unreasonable rates"?

Mr. THOM. No; but you can say that certain things must be considered in fixing them. For example, here is a section of the Interstate Commerce Commission that has held distinctly that they can not consider general conditions in this country in fixing a rate; that they must have regard only to the particular little transactions that are before them. Now, you can say to them in your law that in fixing the level of rates in this country they must take into consideration the whole outlook; that they must regard the credit of the carriers to the extent that such a credit is necessary for them to be able to furnish the facilities as commerce grows. You can say that. Now, that is one of the principal things we want you to say.

Senator CUMMINS. I was coming to just that point. I think the statement you just made is inconsistent with others that you have made, in this: What is a reasonable rate for the service rendered by a carrier is a judicial question finally—the elements that enter into it.

Mr. THOM. You mean judicial—are you using that term as one to be determined by the courts as contradistinguished from the commission?

Senator CUMMINS. We will say it is in its sense judicial. If we were to say to the Interstate Commerce Commission, "Fix a reasonable rate for every service rendered by the carriers," we could not go on and say that in fixing it the Interstate Commerce Commission should fix it thus and thus.

Mr. THOM. Why? You have got a right to fix it yourself. You don't have to go through the commission.

Senator CUMMINS. Because we can not do anything more than to declare that there shall be a reasonable rate.

Mr. THOM. Yes, you can.

Senator CUMMINS. But we can not declare the elements that shall make up the reasonable rate.

Mr. THOM. Not only that; but you can declare the rate.

Senator CUMMINS. We can declare the rate?

Mr. THOM. Yes; and you can tell the Interstate Commerce Commission everything that they must take into consideration.

Senator CUMMINS. Can we say to the Interstate Commerce Commission that "You shall establish rates that will pay 6 per cent on all of the capital stock of the railway company?"

Mr. THOM. Can you say that?

Senator CUMMINS. Would that be a lawful direction?

Mr. THOM. Oh, I think it would be entirely lawful. There is so much opportunity, you know, for making a man appear to advocate something when he says it is merely lawful that I want it understood I am not saying that it is a desirable thing to do, but I say it is a lawful thing to do.

Senator CUMMINS. Then, that would take the discretion entirely away from the commission?

Mr. THOM. You have a right to do that.

Senator CUMMINS. We have a right to establish rates?

Mr. THOM. You have a right to limit it; you have got a right to take it away.

Senator CUMMINS. So that what you really are asking here is that Congress shall so direct the commission that the outcome of the work of the commission will accomplish the purposes that you have in view and take away from the commission its present discretion in determining what reasonable rates are?

Mr. THOM. It will not take away the discretion of the commission by any means, entirely, but it will introduce into their consideration certain standards which, if Congress approves, should be made matters of consideration by them.

Senator CUMMINS. Mr. Thom, have you had any observation with regard to the disposition of investors toward the securities of other public utilities controlled by municipalities?

Mr. THOM. Only what I have heard generally. I have not personally.

Senator CUMMINS. Has the investing mind changed with regard to them, and is it as much disinclined to invest in municipal utilities as in railway utilities?

Mr. THOM. I could not tell you that. We will have here before you witnesses to show the attitude of the investing mind.

Senator CUMMINS. What is your understanding of that attitude during the last four or five years?

Mr. THOM. My understanding of the attitude is rather indefinite on that point, and I would not care to state it, because I do not know enough about it to state with accuracy.

Senator CUMMINS. You do not know whether the utilities throughout the country, under the control of municipalities—

Mr. THOM. No; I do not know how that is.

Senator CUMMINS. Have any difficulty in financing their various enterprises or not?

Mr. THOM. I do not know. That has not come under my observation.

Senator CUMMINS. Excluding duplication, the present capitalization of the railways of the country is about fifteen and one-half billions, is it not?

Mr. THOM. I have not got the figures; I do not know.

Senator CUMMINS. Well, you know it is about \$15,000,000,000, do you not?

Mr. THOM. I thought it was somewhat in excess of that, but I do not know.

Senator CUMMINS. I am excluding the duplication of securities.

Mr. THOM. We will accept your figure for the purposes of your question. I do not know what it is.

Senator CUMMINS. And of this capitalization, in round numbers, nine billions are represented by bonds and six billions by stock.

Mr. THOM. Well, I haven't got those proportions; but I am willing to accept your view, because you are generally very accurate.

Senator CUMMINS. I do not pretend to be exactly accurate, because I am using simply the round numbers, but that is my recollection and it corresponds with your idea that about 60 per cent or a little more of the capitalization will be found in bonds, and about 40 per cent in stocks.

Mr. THOM. I have never found any difficulty in accepting your views as to the facts, Senator.

Senator CUMMINS. You said, and it is universally known to be true, that these stocks were originally issued without payment, or substantial payment, to the corporations which issued them, and that they were given to those who took the bonds as bonuses.

Mr. THOM. Not all of them by any means. A great deal of stock has been issued at par, but there has been a system of issuing stock as a bonus with bonds. Now, what proportion is involved in that I do not know.

Senator CUMMINS. How much of the six billions of stock, or a little more than six billions, were issued without any substantial payment?

Mr. THOM. I do not know.

Senator CUMMINS. I am not now speaking, of course, of what the present investor paid for the stock.

Mr. THOM. I quite understand you.

Senator CUMMINS. I am speaking of the original issue.

Mr. THOM. Original issue, but I do not know the facts.

Senator CUMMINS. You do know that it is a very large proportion of the \$6,000,000,000, do you not?

Mr. THOM. I should be prepared to accept that if it should turn out to be the fact. I do not know.

Senator CUMMINS. Now, it is not true that these bonuses of stocks, through which a large part of the watered capitalization was issued, were absorbed by the promoters and were not acquired by those who actually furnished the money on the bonds?

Mr. THOM. Well, it may be that that was so. I know that there was a large system of promotion and they got, doubtless, what they asked in stock.

Senator CUMMINS. The original way in which it was done, as I understand it, was that the railway company, either through a construction company or otherwise, issued its bonds and stocks, and that the investment brokers or bankers got the stock together with the promoters, and that when finally they sold the bonds to the real investor he got nothing more than the bonds. That is true, is it not, in a large way?

Mr. THOM. I believe that to be true in a great many cases.

Senator CUMMINS. Now, therefore, the man who really invested his money in these enterprises was not an adventurer, was he?

Mr. THOM. Well, you take, for example, such a situation as this: Here is a railroad to be built and the contractor to build it; he undertakes to do it and to furnish the money for the bonds and the stock. Now, that money that built that railroad came in that way. Ultimately those bonds are passed on to the public, just like the stock was passed on to the public, and the man that bought that bond is not the man that built the road.

Senator CUMMINS. Precisely; and therefore so far those roads have been built by the proceeds of bonds that have been bought by investors who get nothing more than the bonds themselves and could make no profit in excess of the interest upon the bonds, is not that true?

Mr. THOM. I expect a great many of those men that took the bonds got stock with them.

Senator CUMMINS. Have you ever gone through the history of the capitalization of any considerable railway, aside from the one which you are interested in?

Mr. THOM. Well, I have been brought in contact with it, and that is the way it is frequently done, for the man who furnished the money to get both stock and bonds with it—so many bonds and so much stock, as a bonus.

Senator CUMMINS. Well, that may be true.

Mr. THOM. And finally that is passed along, until the man who buys the stock pays for it, and the man who buys the bonds pays for them.

Senator CUMMINS. It is not my observation or knowledge that I have acquired, in what little study I have given to it. Notwithstanding the character of the stock—and we have just been discussing that—and the further fact that the bonds or many of them were originally issued in a dishonest way—and by dishonest I mean that the company did not get the proceeds of the bonds and put it into the property that was being built—what per cent upon the capitalization was earned by the railway companies of the United States during the last 12 months, after deducting operation, maintenance, and taxes?

Mr. THOM. I will get the figure and put it in the record, if you want it. I do not know. I will get it and put it in the record.

Senator CUMMINS. Is it not true that during the last 12 months the railway companies have earned net, after making the deductions I have already mentioned, more than 7 per cent upon the entire capitalization?

Mr. THOM. Well, without knowing the fact, and granting it for the purposes of the discussion, I do not think that that has any real bearing on what you gentlemen are called upon to decide, for the reason that I do not suppose anybody will contend that you must consider this abnormal year as a permanent situation. Certainly, investors do not. If you could guarantee always the earnings up to the present level you would have the future very much simplified in respect to railroad matters, but nobody charged with this responsibility believes that this is a fair test.

Senator CUMMINS. I do not myself think it is a fair test, the one year alone; but if we need additional railway facilities—and I am assuming that we will need more—it must be because there will be more traffic to handle in the coming years than is handled now; that is true, is it not?

Mr. THOM. Yes, sir; but—

Senator CUMMINS. And the natural growth of commerce.

Mr. THOM. It does not mean that there will be the same relationship between the amount of traffic and the cost of the facilities. You have got always to determine that as a permanent quantity before you can—

Senator CUMMINS. But in order to be furnished a little more information on the subject, is it not true that the net earnings of all the railway companies of the country, arrived at in the way I have suggested, deducting maintenance and operation and taxes for the last five years, has averaged 6 per cent upon the entire capitalization?

Mr. THOM. I should doubt that very much. I have not the figures, but I should doubt that very much.

Senator CUMMINS. You will bear in mind, of course, that the great proportion of the bonds of the railway companies bear interest at 4 or 4½ per cent, and if the earnings during the last five years, as an average, have paid 6 per cent upon the entire capitalization, the result would be that they have earned enough to pay about 8 per cent upon the entire stock capitalization?

Mr. THOM. I do not believe that to be the fact; and I do not believe that the earnings have been in sufficient amount to attract the investment of the public in them. I think the fact is just the contrary, Senator.

Senator CUMMINS. Do you remember what the net earnings of all the railways were, computed in the way I have suggested, in the year 1910?

Mr. THOM. No, sir; I do not. I can get any of those figures and put them in the record, if you want them.

Senator CUMMINS. Do you know what they were for the year 1913?

Mr. THOM. I do not carry those in my head by years. I know that the percentage has been way below the necessary surplus which must be provided if you are going to attract investors.

Senator CUMMINS. Well, that is just what I am trying to find out—

Mr. THOM. We will have witnesses on the stand to give all those figures.

Senator CUMMINS. And whether the revenues have not been a little more satisfactory to the investors than you have been inclined to believe. I have asked about 1910 and 1913, because the revenues of both those years were very carefully examined into in the two advance rate cases, and I suppose you are familiar with the showing there.

Mr. THOM. You know, I was not in those advance rate cases. We will have testimony on all those points before this committee. I have not charged my mind with that at all.

Senator CUMMINS. If it should turn out that the figures I have given are substantially correct, you would want to revise your view of the attitude of the investor, would you not, a little?

Mr. THOM. No, sir; I would not. I think I have very certain evidence of what the attitude of the investor is.

Senator CUMMINS. One more question along that line. You know something of the history of the capitalization of the Chicago & Alton and St. Louis & San Francisco and the Rock Island and the Erie, do you not?

Mr. THOM. I just know that there has been a general feeling on the part of the public that there have been very unjustifiable methods adopted about them, but I do not know the particulars.

Senator CUMMINS. You know that those companies are conspicuous among all the others for the extravagance and wildness of their capitalization, do you not?

Mr. THOM. I know they have been very much criticized, but I have never gone into those controversies at all, and I do not know about them.

Senator CUMMINS. Excluding those companies, and the standing of their capitalization in the market, I think can be very easily explained for other reasons—is it not true that the roads which in 1913—and I take that because it is the last year for which we have any report—carried 80 per cent of the traffic earned 7 per cent and a little more on their common stock?

Mr. THOM. Well, Senator, you will have to realize, of course, that it would be necessary for me to have all of those figures and to go into them to see what the fact is, and I have not the aspect of the matter that you are now presenting and the figures before me. At the same time I shall be very glad to take it up and to go into that if you desire.

Senator CUMMINS. I did not know but that in looking into the disinclination of investors to loan money upon railway securities or buy stocks, that you had examined some of those things that I am touching upon.

Mr. THOM. All those that I have examined I will tell you about, and those that I have not I will have to answer that I am doing it.

Senator CUMMINS. Do you not believe, Mr. Thom, that a very large factor in the hesitation, if there be such, of an investor to take stock in a railway company is due to the fact that he must put up his good money against the water that is represented in the capitalization of those companies?

Mr. THOM. I believe the impression among investors is that there is, practically speaking, no, or very little, water in any of those companies now. I think that they feel that just as other companies have grown up to their capitalization, that the railways have.

Senator CUMMINS. How did they grow up without the investment of money?

Mr. THOM. How did they?

Senator CUMMINS. How did this property become more valuable without the investment of money?

Mr. THOM. It grows up as every other business does, by the development of its business. The thing that makes property valuable is its capacity for earning.

Senator CUMMINS. Yes; but its earning capacity—

Mr. THOM. And here is a company that goes into an undeveloped territory, and it has a very few developed enterprises. Now, as the years go by a great many enterprises grow up along that property and they add very great traffic to it and thereby increase the value of that railroad.

Senator CUMMINS. That is, increase the earnings?

Mr. THOM. Increase the earnings—increase the value of that railroad, and that is believed by the investing public to have gone on until the railroads have grown up to their capitalization.

Senator CUMMINS. Are you familiar with the three railroads upon which the committee on valuation or division of valuation, appointed by the commission, has found values?

Mr. THOM. I am familiar with the results which are not accepted.

Senator CUMMINS. You do not think the Kansas City Southern has grown up to its capitalization, do you?

Mr. THOM. Those are not accepted by the railroads.

Senator CUMMINS. I know they are not, but you do not believe that a railroad like the Kansas City Southern has grown up to its capitalization?

Mr. THOM. I do not know the exact facts about the Kansas City Southern because I do not know about the road, but I do know that there is going to be a serious contention that great elements of value have been omitted by the valuation authorities.

Senator CUMMINS. I know of that contention.

Mr. THOM. And I believe that contention is a sound one, Senator.

Senator CUMMINS. But, after all, there are degrees in this matter, and when we reach a certain point we ought not to find ourselves out of harmony with each other. Take the Missouri Pacific. Do you believe the property of the Missouri Pacific is worth its capitalization?

Mr. THOM. It would be the wildest guess on earth. I never was on the Union Pacific, and I do not know anything about it.

Senator CUMMINS. I said the Missouri Pacific.

Mr. THOM. I meant to say the Missouri Pacific.

Senator CUMMINS. Do you believe the Rock Island is worth its capitalization?

Mr. THOM. Senator, what basis have either you or I for that belief? I have never been——

Senator CUMMINS. Simply because its stock is selling in the market at 6 cents on the dollar or 10 cents on the dollar or 13 cents on the dollar. Now, you do not believe, do you, that that property is worth its capitalization?

Mr. THOM. Both of those roads are in the hands of receivers.

Senator CUMMINS. And earning more than they ever earned before.

Mr. THOM. What I mean by that is that while you may take a railroad here and there that is not earning enough to sustain its capitalization, that the railroads of the country, as a rule, I believe, are fully worth their entire capitalization, and I believe that if a proper element of value be allowed for reasonably in this valuation, that you are going to see that the railroads of the country are not overcapitalized, as a rule.

Senator CUMMINS. Precisely.

Mr. THOM. Now, that is a controverted question.

Senator CUMMINS. I have no doubt that some railroads have increased in value either through investment or development of the country, so that they are worth their capitalization, but I am sure you would not be willing to affirm that that is true of even the major part of the railway companies of the land.

Mr. THOM. I believe it to be true. Without, of course, adequate investigation of each property, my conviction is that when you allow the proper element of value you will find the railroads of the country are not overcapitalized.

Senator CUMMINS. You mean as a whole?

Mr. THOM. Yes; I mean as a whole?

Senator CUMMINS. I venture to say that in acquiring the companies that you have combined into the Southern Railway Co., you did not pay anything like the capitalization of those companies.

Mr. THOM. That may be.

Senator CUMMINS. Why did you not?

Mr. THOM. But the association of those railroads into a useful system in the growth of business may make those properties, and I think does make those properties, vastly more valuable now than the capitalization of the Southern.

Senator CUMMINS. But if the railroads, taken as a whole, have during the last five years earned substantially 6 per cent upon their entire capitalization—and certainly 6 per cent upon their stock—the situation is not so desperate as we have been led to believe, is it?

Mr. THOM. I think it is. I do not think 6 per cent is enough to enable them to properly operate. You must remember the difference between these properties and other property.

Mr. ADAMSON. Mr. Chairman, if Senator Cummins will kindly yield to me for a second, I suggest that the hour for adjournment has arrived.

Senator CUMMINS. I had lost all track of time.

Mr. ADAMSON. I move that the committee now take a recess until to-morrow morning.

(The motion was agreed to, and accordingly, at 1 o'clock and 30 minutes p. m., the committee took a recess until to-morrow, Saturday, December 2, 1916, at 10.30 o'clock a. m.)



# INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT CONTROL AND REGULATION.

SATURDAY, DECEMBER 2, 1916.

UNITED STATES SENATE,  
JOINT SUBCOMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The joint subcommittee met at 10.30 o'clock a. m., pursuant to adjournment, Senator Francis G. Newlands presiding; also Vice Chairman William C. Adamson.

The CHAIRMAN. The committee will come to order. Senator Cummins, you may proceed.

MR. ALFRED P. THOM—Resumed.

Mr. THOM. Are you ready to begin?

Senator CUMMINS. I am ready.

Mr. THOM. Before you begin I have some information you asked for yesterday, which I would like to put into the record at this point. Taking the five years from 1911 to 1915, the per cent of net income on total net capitalization was, according to the figures of our statistician, 4.56 per cent.

The CHAIRMAN. Was what?

Mr. THOM. 4.56 per cent. The per cent of total income of total gross capitalization was 4.38 per cent. As compared with the five-year period immediately before that, embracing the years from 1905 to 1910, the per cent of net income of total net capitalization was 5.25, and the per cent of total income on total gross capitalization was 5.01, showing a decline on net capitalization in the latter five-year period over the former of from 5.25 in the former to 4.56 in the latter five-year period. The per cent of total income on total gross capitalization shows a decline from 5.01 in the first five-year period to 4.38 in the last five-year period—the returns on stock, not dividends—but the total earnings on stock for the years from 1910 to 1915 were as follows:

For all roads reporting to the Interstate Commerce Commission the amount here stated as the per cent of stock is arrived at by taking the net operating income and adding to that income the principal securities owned, and deducting from that interest on bonds reckoned at 4 per cent. In that way the result would be as follows: Per cent on all stock for the year 1910 would be 7.09, for 1911 it would be 6.17, for 1912 it would be 4.97, for 1913 it would be 5.94, for 1914 it would be 4.06, for 1915 it would be 3.44.

Senator CUMMINS. Where did you get the statistics that you have just laid before the committee?

Mr. THOM. Mr. Errickson, who was formerly chairman of the Wisconsin Commission until a few months ago; he was chairman of the Wisconsin Commission—and has compiled these statistics which I have now given you, and he will be on the witness stand to explain them.

Senator CUMMINS. Are they compiled from the reports made by the railway companies to the Interstate Commerce Commission?

Mr. THOM. Yes, sir.

Senator CUMMINS. Or are they from independent sources?

Mr. THOM. They are compiled from reports made to the Interstate Commerce Commission, and Mr. Errickson will be on the stand during these hearings to fully explain them, Senator.

Mr. ESCH. They embrace only such roads as have capitalization of a million or more?

Mr. THOM. Yes, sir.

Senator CUMMINS. Your suggestion made many times—and I regard it as a very wise one—is that there ought to be, both in the adoption of the regulatory measures and in the administration of the law, a spirit of encouragement and helpfulness rather than a spirit of hostility and repression. You have construed what has been done in the past as having been done largely in a spirit of hostility and repression, I assume.

Mr. THOM. Not only I do that, Senator, but I am convinced that the investing public do that, and we think it is an entirely philosophic growth that you can trace to reasons in the inception of the system in what has occurred to justify public indignation, and we feel at the same time we are confronted with that fact.

Senator CUMMINS. So far as Congress is concerned it has simply committed to the Interstate Commerce Commission the authority to determine what is or is not a reasonable rate to be charged by the carriers for their services. There is nothing hostile in that regulation, is there?

Mr. THOM. No; there is nothing hostile in that regulation at all; it is a very proper regulation, but the feeling in authoritative circles—and by that I mean the men who are in position to speak for public sentiment—has been one that has caused a feeling of parsimony in the administration of those powers in respect to the matter. I would like to illustrate that—

Senator CUMMINS. That is, there has been some difference of opinion with regard to what is a reasonable return to the railroad companies for their services?

Mr. THOM. Not only that, but that question, What is a reasonable return? has been influenced, in my judgment, by conditions outside of the question itself, in such matters as this that I am about to illustrate.

Senator CUMMINS. Do you—

Mr. THOM. One minute, please. Let me answer this question. I am told that there is one of the States—which I will not name, but it will be named during the hearing—I am told in one of the States the State commission whenever it increased a rate would be met with a bill in the legislature to abolish the commission. Now, that commission was also kept on the defensive, and would do whatever was done in the way of advancing rates in the most parsimonious way, and would look to the political expediency, to a certain extent, rather

than to the constructive purpose of guarding the future of the facilities of that country.

Now, I feel that we have gone so far in the expression of public view of these matters that we have put the hand of repression upon the discretion which has been lodged in that commission, and it has reflected very largely a repressive spirit on the part of the people. Now, that is what I am here trying to appeal against and trying to get into a clearer atmosphere.

Senator CUMMINS. I am confining myself to legislation and the administration of that legislation. I am confining myself at this time to the Interstate Commerce Commission and have not in my mind the attitude or the action of the State commissions.

Mr. THOM. I quite understand; but I wanted to illustrate my view of what has happened in the regulation by the Interstate Commerce Commission of this power that you have put into their hands, and which has had the effect of not sufficiently safeguarding the future of the railroads in accordance with public requirements.

Senator CUMMINS. The State commission regulates, at most, not more than 10 or 15 per cent of the business done by the carriers, and I leave that aside for the time being.

Mr. THOM. So do I, Senator; and what I said about that was merely trying to illustrate to you my conception of what is going on also in national regulation.

Senator CUMMINS. You know, do you not, that when the Advance Rate cases were presented, both in 1910 and 1913, and again in 1915, that a large part of the argument and a great deal of the evidence submitted, related to just the thing that you are attempting to impress upon us, namely, that the credit of the railway companies must be sufficient to enable them to go forward and develop transportation facilities?

Mr. THOM. That was undoubtedly so.

Senator CUMMINS. You know, do you not, that the final decision in the Advance Rate case rested on that ground and on that ground alone?

Mr. THOM. I do, and I know that that very thing had been attacked on the floor of Congress.

Senator CUMMINS. Undoubtedly; but you do not expect, do you, that there will be universal concurrence everywhere and with everybody, concerning governmental action. You do not expect that we will get to any such Utopia as that?

Mr. THOM. Undoubtedly not; but unless we get to the point of surrounding these properties by business, rather than political consideration—unless we rise to that point—we are going to repel investors in them.

Senator CUMMINS. But we—according to your own admission—have risen to that point already, because the most important decision of recent times rendered by the Interstate Commerce Commission was based upon the very proposal that you now make.

Mr. THOM. I do not think so, Senator. I think that we have not risen to it, when, on the floor of Congress, that commission is all the time threatened with public indignation because they have done that thing, and by important men.

Senator CUMMINS. I do not know whether that be true or not. There are differences of opinion among the people with regard to the

justice of that decision, and I assume that every man is at liberty to speak his mind with regard to it; but do you know of any man who has asserted anywhere that railway companies should receive less than a reasonable return or reward for their service?

Mr. THOM. No; I do not know of any man, but I know this: I know there are important men who take such a course in public life that they menace the investor with a view entirely different from that which the investor takes, and who, when anything like this happens, make it an issue before the American people, and by their standing, by their ability, they are able to make an impression on the public mind which has the effect of discouraging confidence in the stability of railroad securities.

Senator CUMMINS. But the railway companies make the same issue, do they not? They make a campaign before the American people; they put their views before the public with a great deal of persuasiveness, do they not?

Mr. THOM. Undoubtedly. I am not saying anything against the presentation of the other side. I am asking—not in a controversial spirit—I am asking whether or not an industry can stand a strain of that sort, constant agitation, most intelligently and capably carried forward. Now, can they do that and live is the question.

Senator CUMMINS. You do not hope for a time, do you, when the action of our public officials, either in legislation or in administration, will be immune from criticism or comment?

Mr. THOM. I do not look forward to that, but I am bringing to your attention, as a responsible American statesman, the fact that you are dealing with an industry that lies at the base of American prosperity; that that can not stand the sharp controversial differences; that some way must be found to assure the public, if they are going to continue this investment, that there is a stability of public opinion behind them, and not all the time a controversial opinion—public opinion behind them.

Senator CUMMINS. You said yesterday that one of the ways in which Congress could encourage the railways and be helpful would be to prescribe certain elements which the commission should take into consideration, in determining the reasonableness of railway rates.

Mr. THOM. Yes.

Senator CUMMINS. And I think you expressed the opinion that there was no doubt of our authority to do so.

Mr. THOM. That is my opinion.

Senator CUMMINS. It goes without saying, then, I assume, that if we can tell the commission that it must consider certain elements in determining what is a reasonable rate, that we can also tell it that it must not consider certain elements, in determining what is a reasonable rate?

Mr. THOM. Unless that would prevent the legitimate operation—unless your prohibition would prevent the legitimate operation of economic forces to which, as owners of the property, these people are entitled.

Senator CUMMINS. Yes; but I am speaking now of legislative power. We create a commission to determine what rates shall be; they must be reasonable. Now, it must be true—

Mr. THOM. Now, I say—

Senator CUMMINS. Just a moment.

Mr. THOM. Yes.

Senator CUMMINS. It must be true that if we can state to the commission that in determining reasonable rates it shall consider certain factors, we can also say to it that it shall not consider certain factors; that must be true.

Mr. THOM. No; it must be true—it is true with this limitation, that you can tell them that they must not consider any factor that it is improper for them to consider. I mean by that, this—I will illustrate it in this way: Here was the Monongahela lock case. Congress undertook to have that lock condemned, and it undertook to say that there were certain things that must not be considered in that condemnation, to wit, the value of the franchise. Now, the Supreme Court said that could not be considered, because not to consider it would be to take what was property, contrary to the Constitution.

Senator CUMMINS. Precisely.

Mr. THOM. Now, with that limitation you, in my judgment, have a perfect right to prescribe what shall not be considered. I say this, Senator, I say Congress has a right to prescribe a rate itself, if it is a reasonable rate; that that involves the lesser power to refer it to an administrative body to determine that question and have Congress set the standard by which it shall be determined.

Senator CUMMINS. You are undoubtedly right. Congress could prescribe a rate, subject, of course, to judicial examination, and the judiciary would not examine into the elements which were in the minds of the members of Congress when they passed a law of that character; but that is a very different thing from prescribing to a commission the elements which it shall take into mind. For instance, do you believe that we could say to the Interstate Commerce Commission that in fixing a rate for the railways it must not take into consideration the advance in the value of its right of way?

Mr. THOM. No; because that is property and it would be forbidden by the Constitution.

Senator CUMMINS. And we can not do it, because the Constitution protects it?

Mr. THOM. Yes.

Senator CUMMINS. That is to say that it is a judicial question and not a legislative one?

Mr. THOM. No; it is a legislative question, within the bounds of the Constitution.

Senator CUMMINS. That is to say—

Mr. THOM. I will express it this way, Senator: The Interstate Commerce Commission, or any other commission appointed by Congress, is a hand of Congress. It is a deputized authority to do the things which Congress might itself do. You can prescribe any limit on the power of that commission and place upon it any instructions within your constitutional powers. You are limited simply by the Constitution—by nothing else. You have got a right to deputize anything, except legislative power. You have got a right to deputize administrative power, and the limitation of your instruction is simply the Constitution.

Senator CUMMINS. That is, we have the right then to prescribe any element that will tend to increase the rates, but we can not withdraw any element that will tend to decrease the rates?

Mr. THOM. Yes, you can. The very elements that I refer to might tend to decrease the rate. Those elements are not necessarily the ones that increase the rate. They are merely the declaration by Congress of the things that ought to be taken into consideration. For example, one of the things that I suggest is the rights and interests of the shippers. Now, is that to increase or decrease?

Senator CUMMINS. We are talking now about reasonable rates, and if we leave out the word "reasonable" your conclusion might be true. If we should tell the commission to ascertain what the rate should be, considering certain factors, that might or might not be valid legislation, but when we tell the commission "You ascertain what is a reasonable rate," in my judgment, we can not prescribe any element that judicially, or from the judicial standpoint, is not a proper element to be considered in determining what is a reasonable rate.

Mr. THOM. Senator, I am very disappointed to hear you say so. I have profound confidence in your constitutional views, but notwithstanding my admiration for them, I feel that you are without any support whatever in that proposition.

Senator CUMMINS. You have stated that in your opinion the railway companies should be permitted to earn 9 per cent, and I presume that is upon their capital stock and not upon the entire capitalization?

Mr. THOM. What I said was that it was—as I understood it—it was the general investors' view that in order to make stock salable at par there must be an earning power behind it at least equal to the payment of 6 per cent dividends, and at least equal to the piling up of a surplus to protect it of 3 per cent, which is the equivalent of what you said.

Senator CUMMINS. That is simply a paraphrase of what I have just said.

Mr. THOM. The reason I did it that way was because I wanted to paraphrase it. I wanted to put it in shape where it expressed my own idea.

Senator CUMMINS. Which is that the rates ought to be so adjusted that railway stocks can earn 9 per cent, 6 per cent of which may be used as an annual dividend and 3 per cent of which is to be accumulated in a surplus fund?

Mr. THOM. Yes, sir.

Senator CUMMINS. Now, you also said that in your opinion the rates should be so adjusted that they will represent the value of the service.

Mr. THOM. Yes; I said that that was not the view, however, that I was discussing this case on, because that does not seem to have been given due weight in the decisions of the court, according to my very diffident and very humble opinion.

Senator CUMMINS. We must, in forming legislation, proceed upon one theory or the other.

Mr. THOM. Undoubtedly; and I have assumed in everything that I have said that you are going to put yourselves where the courts seem to have put themselves. I wish very much that Congress could see its way to cut loose from that and to adopt this other principle,

but I said that merely because it was my cherished view of the constitutional question involved.

Senator CUMMINS. You recognize that these two proposals are entirely inconsistent with each other?

Mr. THOM. Which two?

Senator CUMMINS. Namely, the 9 per cent upon the stock and the—

Mr. THOM. Undoubtedly they are.

Senator CUMMINS. — value of the service?

Mr. THOM. I wish you would discard my own views of rate making because they are not adopted by the courts, and the 9 per cent was on the theory that it had been adopted by the courts.

Senator CUMMINS. I think the court has not quite said 9 per cent.

Mr. THOM. Not said the 9 per cent. What I mean is they have adopted the idea that the constitutional right is measured by a fair return.

Senator CUMMINS. Certainly; and you rather expect us to go along on that theory?

Mr. THOM. I am afraid you have got to, Senator. I am afraid you will, at last.

Senator CUMMINS. If you adopt the other theory there is no limit upon the earnings at all.

Mr. THOM. No limit either way on the earnings up or earnings down.

Senator CUMMINS. There is a limit if we assume that there should be simply a fair return upon the value of the property rendering the service—that prescribes a rule that people can understand.

Mr. THOM. I quite understand that, and I understand that this other view that I entertain is one that is not likely to be accepted by the general public, and therefore my testimony in respect to this percentage has reference to the theory of a fair return.

Senator CUMMINS. Then, confining ourselves for a moment to the theory which has been adopted by the courts and which seems to prevail in the country, is it your idea that the 3 per cent surplus should be allowed to accumulate indefinitely, or should there be a limitation upon it?

Mr. THOM. My idea is it ought to be the general rule of earnings, but in lean years you will have to go into that to pay your dividends.

Senator CUMMINS. Suppose your rates are adjusted in the lean year so you will have 9 per cent in the lean years, what would you do with the surplus?

Mr. THOM. Senator, you are suggesting the impossible. There has never been a rate made yet that was not made in prosperous years and on prosperous standards. I mean legislatively made.

Senator CUMMINS. But you can not assert that with regard to the action of the Interstate Commerce Commission, can you?

Mr. THOM. Oh, no; because they have got to make them all right along.

Senator CUMMINS. Legislatively, Congress has never attempted to make a rate?

Mr. THOM. But if you will examine rate making in this country you will see the political agitation about rates has arisen in prosperous years, and thereupon they take the prosperous standards to

make the rates accordingly and let the lean years take care of themselves.

Senator CUMMINS. However that may be, the suggestion does not appeal to the Interstate Commerce Commission, does it?

Mr. THOM. It does not, and they ought to be established on an average condition.

Senator CUMMINS. You do not mean to assert there should be no limitation upon the accumulation of a surplus, do you?

Mr. THOM. Oh, no.

Senator CUMMINS. What would be a fair, reasonable limitation from your point of view?

Mr. THOM. My point of view is that the Interstate Commerce Commission will look over the whole situation and ought to establish a basis of earnings, about what I have said, where the lean years would decrease it, the prosperous years somewhat increase it, and where we will realize that that surplus will necessarily go to build up and strengthen the transportation systems of the country which the little amount of money involved in the earnings will not begin to compare with.

Senator CUMMINS. Do you mean to use the surplus that you accumulate in that way in the development of the property, or hold it for the purpose of paying dividends in the lean years?

Mr. THOM. I think that two things ought to be considered; a proper provision to make up deficiencies in dividend ought to be provided for and the balance put into the property.

Senator CUMMINS. Why should any of it be put into the property?

Mr. THOM. Simply because the people that own the property are perfectly willing and content that a proper proportion be applied to the upbuilding of the property.

Senator CUMMINS. They contribute, we will say, 3 per cent this year, and then next year you will not earn another dividend of 6 per cent upon the surplus that you have invested in the property. That is not fair regulation, is it?

Mr. THOM. I think when the money is earned it becomes the property of the stockholders.

Senator CUMMINS. But in fixing the rates, you are, as I understand you, suggesting that if the stockholder has 6 per cent every year he will be satisfied?

Mr. THOM. If he is certain of it.

Senator CUMMINS. And that the 3 per cent surplus, or whatever surplus is fair, is intended to guard against a year in which the earnings will not pay the dividend of 6 per cent?

Mr. THOM. Through a series of years.

Senator CUMMINS. If you invest the surplus in the property then it is not available for the purpose of paying dividends, is it?

Mr. THOM. No; not if you invest it all, therefore I suggest the right way, for wise business management, is to accumulate a certain amount in cash necessary for that and to put it back in the property.

Senator CUMMINS. You do not expect the rate payers in this country to build up the property, accumulated in the way you have suggested, and then pay interest upon the value of the property that is built up in that way—you do not expect that, do you?

Mr. THOM. No; what I expect is this: I expect that the public, when they commence to consider the question, will say that the

greatest public interest is in adequate transportation facilities and adequate all the time; that therefore they have got to permit such a basis of earnings as will attract the new capital necessary for that purpose, and I do not expect the rates that will be permitted to be charged will allow an undue accumulation. We need not discuss the question on anything else except principle, because you are not going to state in your law how much shall be allowed. You are merely going to try to safeguard certain public purposes, and that standard will be accepted by your deputy, the commission, and will be applied in their discretion to carry out that purpose in different ways at different times.

Senator CUMMINS. You agree, then, that the surplus is really to protect dividends and ought not to be used to build up the property upon which another return is to be expected?

Mr. THOM. Well, I did not say that, Senator.

Senator CUMMINS. We will pass that if you do not agree to it.

Mr. THOM. I think it would be wise business management of those matters.

Senator CUMMINS. You recognize that a very large part of the business of the country is competitive among the railroads, do you not?

Mr. THOM. A very large part is.

Senator CUMMINS. And you recognize that rates, which do carry competitive business, must be the same rates?

Mr. THOM. Undoubtedly they ought to be.

Senator CUMMINS. You recognize, also, that there are companies which can do business, serving competitive territory, accumulate 9 per cent upon their stock every year, that will put the competitive company into bankruptcy?

Mr. THOM. And therefore I have—

Senator CUMMINS. No; not "therefore," but I ask you if you do not recognize that to be true?

Mr. THOM. Yes; but I suppose I am entitled to make not only a categorical answer but an explanation, Senator?

Senator CUMMINS. Yes; but I should like to know whether you recognize that to be the situation?

Mr. THOM. That is a possibility, and therefore I say it is exceedingly wise on the part of the Interstate Commerce Commission, when it applies the principle of a return on the property as a standard of what the Constitution requires, to take an average condition and deal with it, as it did in the Eastern Rate cases.

Senator CUMMINS. Yes; but what I have just suggested is really one of the insoluble problems in railway regulation, is it not?

Mr. THOM. I thought the commission had probably dealt with it pretty well in that case, in the way of a solution.

Senator CUMMINS. I know of a railroad, and you do, too—you know a good many of them—where two railroads given the same rates, one of them will earn 25 per cent on its capital stock and the other one will not earn anything, and they do competitive business and they serve a competitive territory.

Mr. THOM. That is a very possible situation.

Senator CUMMINS. What are you going to do with a situation of that kind?

Mr. THOM. You are going to deal with it in a broad, comprehensive spirit of recognizing the real situation and try to apply business principles to it instead of political principles.

Senator CUMMINS. That does not mean anything to me, those generalizations. We have either got to allow one railroad to earn a very large return or we have got to destroy the other railroad.

Mr. THOM. Then the question would come up, as I suggested, using business discretion about it, the question would come up whether or not there is any wrong done the public in the rate which makes this large earning for the big company. If so, if no wrong is done it, then the fact that its earnings are very great ought not to be objected to if this class of property is to retain public favor or have public favor.

Senator CUMMINS. I want, Mr. Thom, to discuss with you a moment or ask of you a few questions with regard to Federal incorporation. You answered Mr. Adamson, and I think correctly, that a State corporation had a right to enter a State foreign to its domicile without the consent of the latter in order to engage in interstate business?

Mr. THOM. Yes; provided it can find a method of doing it.

Senator CUMMINS. The general rule is that a corporation organized in one State can not enter another without the consent of that other; that is the general rule, is it not?

Mr. THOM. Yes; it is.

Senator CUMMINS. There are two exceptions to that, as I remember the law, although I am a little bit rusty in the law now, and the two exceptions are these: If the corporation is about to perform a Federal function, a general function, it can go in without the consent of the State, or if it is to engage in interstate commerce, it can go in to do that commerce.

Mr. THOM. Now, Senator, on that general principle I am in entire accord. Here has always been my difficulty on that point. Suppose we have a railroad chartered by the State of Georgia, authorized to do an interstate business, and that railroad wants to acquire a right of way in the State of Alabama and the State of Alabama will not give its consent. Now I have never been able to exactly reconcile it to my mind how, in the absence of congressional legislation on the subject, that corporation, chartered by the State of Georgia, can go in and obtain a right of way in Alabama against its consent. On the other hand, suppose there is a mercantile concern in the State of Georgia that wants to do an interstate business. It does not require the obtaining of any right of way to do that business and they can send their agencies there and do it without the consent of Alabama. But have you ever considered it from the standpoint of acquisition of right of way?

Senator CUMMINS. Yes; but my question did not involve that feature of it. I do not believe a foreign corporation can exercise the right of eminent domain within a State without the consent of the State within which the power is to be exercised, but of course Congress could give a State corporation the right to exercise the power of eminent domain in that State.

Mr. THOM. I think so. You mean engaging in interstate commerce?

Senator CUMMINS. And that Congress could give to a corporation, organized under its own law, the authority to take property for a public purpose in any State?

Mr. THOM. Yes, sir.

Senator CUMMINS. In order to carry on interstate commerce?

Mr. THOM. Undoubtedly.

Senator CUMMINS. Do you believe that Congress could give a Federal corporation the right to enter a State and do intrastate business without the consent of the State?

Mr. THOM. Undoubtedly; I do.

Senator CUMMINS. It has never been so decided, has it?

Mr. THOM. Oh, no. Here is what I mean, I mean that a Federal incorporated company to do an interstate business can be permitted by Congress to go into a State and do a local business just as much as the United States can permit its banks to go into a State and do an interstate business.

Senator CUMMINS. I do not want to bring the banks in because that rests upon an entirely different proposition, in my judgment; but I do not believe that a corporation, organized under the State of Illinois can come into the State of Iowa and do what is known as intrastate business without the consent of the State of Iowa. I do not believe that a Federal corporation can enter the State of Iowa and do an intrastate business, whatever that may be. If there is no such thing then the difficulty disappears without the consent of the State, and it is upon that point that I should like your opinion.

Mr. THOM. Senator, I take occasion again to say, as I have said often in your presence and outside of it, I understand and appreciate your constitutional conception and therefore I am diffident in expressing a view at this time that has not been confirmed by Congress. But I feel, undoubtedly, that Congress possesses that power. I have instanced the state of the banks, which you think rests on a different principle, but it seems to me the principle underlying both of those cases is the same. Now here is a Federal purpose, the establishment in the one case of a bank, in the other case of interstate carriers. It is to carry out one of the constitutional functions of the Federal Government in both cases. In order to do that those two companies, the banks on the one hand and the railroads on the other, must be permitted to enter into the entire field of commerce. To say that the Government of the United States is confined by its agencies to do an interstate business by the corporations which it finds necessary in the public interest to create, is to hamper the United States Government by taking away from it 15 per cent of a real field of commerce. Now, in my judgment, they can not exclude the States from doing that. The States can build as many railroads and allow as many governmental agencies as they please to do interstate commerce, but the States have no right to assent or dissent from the power of the Federal Government to engage in the full field of commerce any more than they have the right to say that this national bank shall come here and that it can do business that is interstate in character, but that it can not do business that is State in character.

I believe both of those things are an essential element of sovereignty, which the States have agreed should, in their interests and

in their behalf, be vested in the impartial hands of the Federal Government, and that that can not be subject to be crippled by withdrawing from them any proper element of commerce when they undertake to do any other portion of commerce.

Senator CUMMINS. I do not intend to conduct an argument on that point with you, but I feel great doubt about it. I think the right to incorporate a bank, in order to carry on a governmental function, is one thing. Our right to regulate commerce among the States is quite another, and I am not now trying to settle what is so connected with interstate commerce as to bring it within the Federal jurisdiction, but I am assuming there is something outside. Now, I am not able to see how we can authorize a Federal corporation to do that thing outside, under our power to regulate commerce between the States.

Mr. THOM. Senator, what do you regard as the constitutional basis for the power of the Government to establish national banks—what provision of the Constitution?

Senator CUMMINS. I would simply have to quote from McCulloch against Maryland.

Mr. THOM. What did that case say?

Senator CUMMINS. There is no use of my quoting—

Mr. THOM. What did that case say was the function of the Government to establish Government banks?

Senator CUMMINS. To carry on business, create business—Government business.

Mr. THOM. In other words, we all have to admit—

Senator CUMMINS. And some people have thought—

Mr. THOM. We all have to admit that there is no clause in the Constitution to which you can assign the governmental power to establish banks, as distinct as the commerce clause. You have to hunt all over and find some possible basis for it.

Senator CUMMINS. That is true, but the commerce clause is limited. The other is not.

Mr. THOM. Yes—

Senator CUMMINS. The commerce clause is limited to a certain kind of commerce, and we can not authorize a Federal corporation to do anything that is not in and of itself a regulation of commerce among the States.

Mr. THOM. Yes; but the other is not limited, because you can not find it in the Constitution. You can find this in the Constitution. Now, if anything on earth—here is an exercise of a governmental duty, found on the face of the Constitution, with respect to interstate commerce. We all admit—at least I am sure you and I do—that Congress had the constitutional power to incorporate an agency to carry that on. Having that done, the law will never permit that agency to be crippled and destroy that power—the exercise of that power to be made unavailing by withdrawing from it the support of any portion of commerce that is usually carried on by some carrier.

Senator CUMMINS. All of that is based on your general proposition, which may or may not be well founded, that because the revenue derived by a carrier from intrastate business may be less than a proper revenue for the service, and thus a burden imposed

upon interstate commerce, that must be borne by the interstate rates, brings the whole subject under Federal jurisdiction.

Mr. THOM. I think so, and I suppose what we are now discussing is academic rather than practical, for the reason that, doubtless all of us will agree, no State would prevent an interstate railroad, simply because it was chartered by the Federal Government, from doing intrastate business there. It would be glad to have it do so.

Senator CUMMINS. It arises in this way: I assume that if we incorporate railroads we will at the same time group them through the Interstate Commerce Commission, and the corporation which we authorize will acquire the property of this group of railways. That seems to be reasonable.

Mr. THOM. I do not think that is the wisest way to do it. It may turn out that that is, but that has not so appeared to me.

Senator CUMMINS. Don't you think it is about a fair thing for the Federal Government, if the Federal Government were to acquire the railroads, to pay their value—

Mr. THOM. I did not quite catch that question.

Senator CUMMINS. Undoubtedly we can give the Federal corporation the right to condemn.

Mr. THOM. Undoubtedly.

Senator CUMMINS. Now, suppose it should go on and condemn properties of which it is to become the owner. What would be the measure of the condemnation?

Mr. THOM. What would be the measure of value?

Senator CUMMINS. The measure of value.

Mr. THOM. What the property was worth to the person whose property was condemned.

Senator CUMMINS. Not what the property is worth—not what it is worth to the owners of the condemned property, but what the property is worth. That means the acquisition by the new company of property at its fair and reasonable value.

Mr. THOM. The Supreme Court has determined that that value must be considered in respect to the person whose property is condemned.

Senator CUMMINS. The kind of property taken and the service—

Mr. THOM. No; the value to the owner of it, for any legitimate purpose.

Senator CUMMINS. That has always been the rule in respect to any property.

Mr. THOM. That is what I say. It must be taken with reference to the value of it to the person who owns it.

Senator CUMMINS. In that way we could establish a capitalization that represented the real value of all the properties, could we not?

Mr. THOM. Oh, we could—you would not have to pay for anything except value.

Senator CUMMINS. Would you be willing to cooperate in that plan?

Mr. THOM. My judgment is that the only wise course for the American Government to pursue is to regard—unless they want to upset the very fundamentals of healthy conditions in this country—is for the American Government to realize that certain things have happened in this country, and you must deal with that status as it is. Some men say there is watered stock. Other men say there is no

longer any watered stock; that values have grown up to them. I do not believe that you can, without creating an upheaval that is not in the public interest, try to disturb that situation. You must safeguard the future, but deal with the past as it is.

Senator CUMMINS. You plan absolutely involves the recognition of all stock now outstanding in the railroads?

Mr. THOM. There is one way you could provide for that—that is open for you to provide for that.

Senator CUMMINS. There is your difficulty. You will never be able to establish, in my judgment, the securities, and especially the stock securities, of railway companies until the people understand that those securities are practically the measure of value of the property which they represent.

Mr. THOM. Now, the only way, I think, you are going to get at that, if there is any reason for dealing with it from that angle, would be to issue stock without par value to the present holders, share for share, so that their relative interest in whatever the assets are shall be maintained, but without expressing it in dollars.

Senator CUMMINS. That would be done, anyhow. Suppose the Government organized a corporation and that corporation proceeded to take over the property of the Southern Railway Co. It would ascertain its value according to the principles which the courts all recognize, and having ascertained its value, it would pay the Southern Railway Co. the sum of money so established, and that money would be distributed among the present owners of the Southern Railway according to their holdings.

Mr. THOM. You mean that in the case of Government ownership it would do that?

Senator CUMMINS. No; I am speaking of the Federal corporation.

Mr. THOM. I do not think that is the way.

Senator CUMMINS. But it is a way, is it not?

Mr. THOM. Oh, that is a way; but I do not think that is the way.

Senator CUMMINS. Then, we would have the Southern Railway Co. under Federal law, with its value ascertained, and with stock the bonds outstanding representing that value. Then you have a basis in the markets of the world for the establishment of credit.

Mr. THOM. I think that you do not properly estimate the peculiar value of what you are there suggesting, Senator. I believe that this thing is a tremendous step; that it has to be taken with wisdom; that it has got to be taken with the purpose of disturbing the least possible the present financial conditions of the country and of the world, and that the way to do it is to provide that after a certain date no corporation shall engage—no railroad corporation—shall engage in interstate commerce unless it takes out a Federal charter; thereby you open the way by which a Federal charter may be secured, and provide that that shall not affect the bonded indebtedness, other indebtedness, or stock ownership of the existing corporation, but that the present securities outstanding shall represent corresponding interests in your corporation.

Now, there you have done this: You would say, from the point of view which your questions now indicate, this: We have thereby not dealt with the purpose to squeeze water out of existing securities.

Now, I say that the only way in which you will ever succeed in doing that at the time, if you find with your conception of public

duty it is necessary to be done, will be instead of issuing \$100 shares in the new company for \$100 shares in gold, you issue a share in the new for a share in old and do not express in the new company value at all. It is just like if you and I and other members of the committee, 10 of you and myself, owned a farm; we would each have one-eleventh interest. We might divide that, put it into a corporation, and each one of us would have 11 shares of stock and each one take 1. Now there would be no value attached to that except what could be gotten out of the farm, but we would all have an eleventh interest. Now, that is a method that you might consider.

Senator CUMMINS. I recognize that it is a method. That simply deludes the country, that is all. It avoids realization of the fact that the value of the property is less than the capitalization.

Mr. THOM. No; it does not say anything about values. It just puts a share of ownership—

Senator CUMMINS. Precisely; but when the commission in its authority comes to fix the rate or rates for that property the value of the property will be taken as a basis for those rates. They are engaged now in valuing the railroads for that very purpose, and why, inasmuch as we are not going to fix rates upon any other basis than the value of the property, why not come down to the proposition and allow or capitalization to represent the real value of the property?

Mr. THOM. Why, Senator, I believe that under the present decision that the ultimate criterion of rate fixing is value, not stocks and bonds. In other words, I am agreeing with the proposition that you have just announced to that extent. Now, I say the reason why you can not adapt the capitalization to value unless it is done already by the correspondence between the two is because you would be undertaking a task which would result in the financial ruin of the world. You would be trying to take hold of values which had been bought and had been distributed among the innocent investing public and trying to affect those values, and you can not do it by the power of government without an upheaval that it is not in the power of government to stem.

Senator CUMMINS. I think possibly you do not take into consideration all the factors. This stock is now discredited. This stock is now hocked upon the market for a fraction of its par value. Now, if it is made to represent the real value of the property out of which it is issued, it will assume, then, a par value, or ought to. The only difference is this—and I may be permitted to suggest it—you are hoping all the time, or at least some people are hoping all the time, that these stocks that are now comparatively worthless in the market will, by some necromancy, be allowed to grow into a par value, and in that way apparently nothing is taken from the stockholder.

Mr. THOM. Do not talk about necromancy, please, Senator. Use some other term than necromancy. By some economic growth.

Mr. ADAMSON. Legerdemain.

Senator CUMMINS. If it is by legitimate economic growth, then the new stock that would be issued, that would represent the real value of the property, would correspondingly raise the value.

MR. THOM. Undoubtedly; but you never would be able to impress the men whose stock is taken in that way with the fact that you are not making war on them, and you are going to disturb the financial confidence of the world by doing it.

SENATOR CUMMINS. Well, I do not think it would myself. I believe that it would be a very healthful but somewhat painful surgical operation, and the sooner it is performed the sooner the patient will recover. I have a great deal of sympathy with your general plan.

MR. THOM. I know you have, Senator.

SENATOR CUMMINS. But I think, when you base it upon the legalization and the perpetuation of all the securities that are now outstanding you have raised up an obstacle which you will never be able to overcome.

MR. THOM. Well, I do not know. I want you to understand that in every view I have presented I have presented it to be tested by the public interest and by the wisest sort of statemanship of this country. I have not presented in any way a view which I am not willing to submit to that kind of a test, and where I am wrong I would be greatly delighted to have wiser people set me right.

SENATOR CUMMINS. I am afraid that your mind is like many another—possibly like all others—somewhat difficult to convince.

MR. THOM. That is mostly the case, we find, when we get with men with strong convictions.

SENATOR CUMMINS. That is all I care to ask, Mr. Chairman.

THE CHAIRMAN. Mr. Esch, will you proceed with the witness?

MR. ESCH. Mr. Chairman, I hope that both my cross-examination and the answers thereto will have good terminal facilities.

MR. THOM. has the Supreme Court always followed the same policy with reference to determining the reasonableness of the rate and the fair return to the carrier, or has there been an evolution in the court in recent years on that subject matter?

MR. THOM. I think there has been a partial revolution. I do not think they are yet committed finally to any opinion on that subject, although I think it is fair to state that in dealing with an entire situation they have indorsed the idea of a fair return.

MR. ESCH. You are familiar with the Granger case, known as *Munn v. The State of Illinois*. If I recollect rightly, that decision was to the effect that the courts would not go back of a rate fixed by the legislature, even though such rate brought no profit whatever.

MR. THOM. They have abandoned that whole ground. They did announce that proposition in the *Munn* case. That was in 94 U. S., and then, I think in 118 U. S., they abandoned that whole principle.

MR. ESCH. But in the next step in this evolution, in the case, I think, of *The Covington & Lexington Turnpike Co. v. Sanford*, they held that the governing body would not be responsible for the amount of profits, and if any profits could be shown by the public utility, that would satisfy the legislative judgment.

MR. THOM. Yes; but they went through that stage that you have just alluded to.

MR. ESCH. Then came the famous Nebraska case of 1897, *Smythe v. Ames*, which determined, what you have announced several times, the fair return upon the actual property devoted to public use.

Mr. THOM. Yes, sir; of course there was also the Wabash case, you remember.

Mr. ESCH. Yes; but *Smythe v. Ames* is the outstanding case, is it not?

Mr. THOM. Undoubtedly.

Mr. ESCH. And in that they went further and said that in consideration of the reasonableness of a rate the value of the stocks and bonds might also be taken into consideration together with eight or ten other different elements of value.

Mr. THOM. That was one of the factors that they mentioned that would probably be considered in *Smythe v. Ames*.

Mr. ESCH. So that showed an abandonment of the doctrine in the case of *Munn v. Illinois* and also the Turnpike case.

Mr. THOM. In other words, the abandonment of the idea that the legislative discretion was without limit?

Mr. ESCH. Yes.

Mr. THOM. Yes; but that had been abandoned, Mr. Esch, before that.

Mr. ESCH. It is a leading case?

Mr. THOM. Yes; it is a leading case.

The CHAIRMAN. What case is that?

Mr. THOM. *Smythe v. Ames* in 169 U. S.

The CHAIRMAN. You say it was abandoned in 118 U. S.?

Mr. THOM. Yes; in the case of *Munn v. Illinois*.

Mr. ESCH. But in the case of *Wilcox v. Consolidated Gas Co.*, which is a more recent case, they there held they were entitled to a fair return and said, I think, that 7 per cent was a fair return.

Mr. THOM. My recollection is they said about 6. I would not be certain.

Mr. ESCH. Which has been followed by one or two subsequent cases along the same line.

Mr. THOM. Yes; sir; the *Knoxville v. Water Co.* case was one.

Mr. ESCH. In that *Wilcox* case did they not also state that the value of the franchise must be considered as part of the assets in determining the reasonableness of the rate?

Mr. THOM. That is my understanding.

Mr. ESCH. Is it your opinion that in fixing rates through governmental agency for public utility bodies, that the franchise should be considered as an element of value?

Mr. THOM. I think we would have to find out what you mean by franchise. I think you have got to take the whole property as a going concern and with the right to go and to earn in that field, and if the right to go and earn in that field is a franchise, then I think you must do that—take that into consideration.

Mr. ESCH. Here is a grant by a legislature, for instance, for a railroad to construct a line. That grant, of course, implies the right of eminent domain, which is part of the sovereignty, and the grant is free. That grant is valuable. Shall the corporation be permitted to have valued a franchise which it has got free in fixing the reasonableness of the rate charged to the people of the sovereignty which granted it?

Mr. THOM. Unless the right to do that is qualified in the grant.

Mr. ADAMSON. Mr. Esch, do not the various States regard that as taxable property, the franchise itself, and do they not tax it?

Mr. ESCH. It depends upon the different States.

Mr. ADAMSON. Some of them do?

Mr. THOM. Yes; it is universally done. The tax is considered a value. Mr. Esch, suppose we have this situation, which is not uncommon in the western roads, of having large land grants made to railroads in order that they shall be built. The Government was confronted with the question whether or not it was more valuable to the Government to own these lands in the condition they then were or to give them to the railroad company, which would undertake to build its railroad, and in the case of a land grant the Government determined that it was a wise thing to do, to give the land and to get the railroad.

Now, I have never seen any principle which would deny to that railroad company the full enjoyment of these lands as much as if it had bought them.

It did not pay in money. It did pay in carrying out its contract to build the road, but if it paid nothing—a gift to me—if you gave me a farm out in Wisconsin—the State of Wisconsin—neither the State of Wisconsin nor this Government can take away from me that farm any more than if I had bought it from you. It is my property by a lawful system of acquisition, and, consequently, it seems to me that the true principle is to determine what the property is, not its method of acquisition, and that is as Judge Adamson has just suggested, that principle is almost universally recognized in a legitimate application of the governmental power of taxation. That is true in every State that I am acquainted with. They do tax this franchise of the railroad company which is given by the State, and the State—one State taxes the franchise which was derived from another State.

Mr. ESCH. Do you know what State that was?

Mr. THOM. Well, if you take the Southern Railway Co., that entire franchise was given by Virginia. There is not a State in which the company runs that does not tax a part of that franchise.

Mr. ESCH. Do you know in the Spokane rate cases, when the questions of the rates over the Great Northern and Northern Pacific were involved, whether or not any allowance was made for the fact that the Northern Pacific had a tremendous land grant and the Great Northern had none?

Mr. THOM. I do not know how that is. I don't remember. I wish you would tell me about that.

Mr. ESCH. No; I asked for information. You stated that economists and experts in railroad matters recommended that there should be the ratio of 60 per cent outside to 40 per cent inside capital.

Mr. THOM. I said that is what I believe to be the rule. We are going to develop that by having people here to testify about it. Now, I understand that there is some difference of opinion. Some people think it ought to be made as high as 35 or as high as 45 or 50 per cent of inside capital. I believe you are going to find it to be 60 and 40, as you have mentioned.

Mr. ESCH. You have said that the New Haven road sought to issue something like \$67,000,000 of securities; that Rhode Island

and Connecticut assented; that the Public Utilities Commission of Massachusetts, while approving, denied its right under the statute of Massachusetts.

Mr. THOM. That was its power under the statute of Massachusetts.

Mr. ESCH. Do you know whether that was because there was any provision in the law with reference to this ratio of outside and inside capital?

Mr. THOM. No; on the question of whether or not they could issue convertible securities under the laws of Massachusetts.

Mr. ESCH. That question, then, of security was not involved in denying the issue?

Mr. THOM. Of the proportion?

Mr. ESCH. Of the proportion.

Mr. THOM. No; that was not involved.

Mr. ESCH. Had it been involved do you think it would have been a righteous denial?

Mr. THOM. You mean if it had been involved?

Mr. ESCH. The proportion had been destroyed.

Mr. THOM. The proportion had been destroyed? I think, then, the question, Mr. Esch, would have been this: Do the public interests require our approval of a plan which will violate that rule of safety, in order to obtain an immediate supply of facilities, or must we adhere to this rule of safety, even though it is a denial of facilities which the public at once requires? and I can very readily see that if I had been on the commission I would have violated the rule of safety in order to supply the facilities.

Mr. ESCH. Do you think that would be a safe rule of action?

Mr. THOM. No, I do not; but I think it would be a risk which in some emergencies it would be necessary to take. It is a question, then, of judgment, one side or the other of the question.

Mr. ESCH. You have stated, and others have frequently stated, that one purpose of Federal incorporation on the part of common carriers doing interstate business was to avoid the embarrassment in connection with 49 masters. What railroad system in the United States crosses more than 15 State jurisdictions?

Mr. THOM. I do not suppose that any of them cross more than 15. There may be one or two.

Mr. ESCH. Is not the Southern road one of the most extensive in that regard—possibly the most extensive?

Mr. THOM. I do not think the most extensive. The Southern road operates in 11 States.

Mr. ESCH. And with the Interstate Commerce Commission that would make 12 masters?

Mr. THOM. Yes.

Mr. ESCH. And it may be said, therefore, that in no contingency could there be any railroad that would be subject to possibly more than 14 or 15?

Mr. THOM. I think that is so; but in speaking of the whole country, all of the railroads of the country are subject to 49 masters, and in this sense each railroad is; of course, a railroad is interested in the carrying of traffic which does not originate in the States through which it runs and the terms which are imposed by law. Now, the payment for its participation in that traffic is determined by what

the regulating power fixes to all, and that regulating power, in fixing the rate across the continent, so has to assume a burden for interstate commerce, which is created by the nonparticipation of any one of 48 States, to a proper extent in the maintenance of transportation facilities up to the standard of the national judgment. The Interstate Commerce Commission, when called upon to fix a rate on citrus fruits from California to New York, ought to take into—if it is going to properly safeguard the public's real interest in fixing those rates—ought to take into consideration the proper development of the transportation system up to the point of the public's needs, and provide that that standard shall be maintained; but here we come across perhaps some other State, some State anywhere in the United States, that has the policy of noncontribution to such a standard. Now, manifestly that burden—that puts a burden on the interstate carrier, and in that sense each one of the railroads is subject to the varying policies of all the 48 States.

Mr. Esch. I do not want to repeat a question that has been put, and hence there is not much sequence to my interrogatories, but on the question of taxation, in your judgment, under your plan of Federal incorporation, would it be wise and practicable for the Interstate Commerce Commission or a like body to fix the unit or standard of taxation, leaving the application of that to the individual States?

Mr. Thom. I know we are dealing, Mr. Esch, when we come to taxation, with an extremely sensitive unit, and therefore what I would advocate and what I think wise may be two different things. I think that every man in dealing with a practical situation has got to consider, in what he advocates, what is reasonably practicable under the conditions which confront him. In dealing with a question of philosophic consistency and propriety in a distribution of governmental power the mind may arrive at entirely different conclusions. Now, philosophically considered, from the standpoint of a perfected system, there is no doubt in my mind that the wisest course in dealing with the public interest in respect to these transportation companies is for one authority to have control over everything that goes to their vitals, and therefore in the question of taxation the power of taxation constitutes one of those things. In an ideal state, where it is possible for a man to exercise his judgment, undisturbed by forces which the statesmen see exist in society, the ideal way would be to declare the principles, as Marshall did, that the power of tax is the power to destroy, and therefore must be controlled by the responsible governmental agency. But I do not think that situation is a possible one. I believe that the United States must, in considering the sensibilities and the needs which the States now have, based upon their possession of this asset for taxation of the system of government they have established, I believe they have got to leave that taxing power with them because of these practical conditions to which I have alluded.

Mr. Esch. Of course, if that be true, that would permit one State, by raising an excessive rate of taxation, practically burdening interstate commerce, and hence burdening the people of another State.

Mr. Thom. Undoubtedly.

Mr. Esch. Then that would be simply a repetition of the same difficulty with reference to the rates?

Mr. THOM. Except it should be different—very different in its bearing and importance. Now, the United States Government, while showing its deference to State conditions, would not deprive itself of the ultimate assertion of the taxing power as an entirety if it found that it was necessary. My hope would be that it would not be so exercised by the State as to make that step necessary for the National Government to take, but the National Government would be in a position to take it any time, when one of the States would be so oppressive in its policy to another State as to make it necessary to fairness.

Mr. ESCH. If the Government could fix the standard or unit of taxation and leave to the State the application of it—

Mr. THOM. I would think that that would be a consummation greatly to be desired.

Mr. ESCH. As it is now, different States have different statutes for taxation.

Mr. THOM. Undoubtedly; and if it is a practical thing to do, nothing could be of greater value. I do not mean nothing, but I mean there are few things that could be of greater value.

Mr. ESCH. You have stated repeatedly that 15 per cent of the traffic of carriers in intrastate. How is it possible for the rates on so small a percentage of total traffic, imposed by a State, to seriously affect interstate commerce?

Mr. THOM. Because the margins are so small that every burden anywhere has to be absolutely watched. The system of regulation has gone to the extent of cutting down every margin so close that the least cut anywhere else is felt, and when you affect the revenues on 15 per cent of your business you are affecting a very substantial part of it.

Mr. ESCH. Well, the complaint is that the intrastate rates are too low; is not that the truth?

Mr. THOM. That is, in many cases, true. They differ materially. I know two States—if you will allow me to say so—that join; they touch each other, and the rate in one of those States is incomparably higher than in the other.

Mr. ESCH. On the same commodity?

Mr. THOM. On the same commodity, for the same service; and that State with the high rate is bearing the burden of the State across the border and is helping to bear the maintenance of a system of interstate commerce. There is one member of this committee whose State is in that condition.

Mr. ESCH. Well, is it not also true that there are some intrastate rates that are higher than interstate rates on the same commodity?

Mr. THOM. Yes; and there you have to take this into consideration. Of course a State haul, as a rule, is the short haul. A large part of the expense of rendering that service is in the terminal service at one end and in the terminal service at the other. If those expensive terminal services are spread over a very long movement they will become less serious, but where you spread them over, in the certain case of a mile or two, or of a few miles, they become very serious, and therefore the contention has always been that the cost of the short-haul business is so much greater than the cost of the long-haul business that the rates ought to be very considerably higher for the short-haul business, and you frequently find the rates in the State

where they are actually higher than in an interstate movement, and yet that level is not yet high enough to sustain the increased cost of doing that business, and the cost of doing the short-haul business is thrown on the long haul by the injustice.

Mr. ESCH. Can you quote any statistics as to the amount in tonnage and receipts of intrastate business and the amount of reduction of the rates, intrastate compared with interstate on the same commodities?

Mr. THOM. We are trying to have developed for your information the percentage of the traffic of the country that is interstate and that is intrastate. I had not yet undertaken the other phase of the matter suggested in your question and I have not any data on that subject.

Mr. ESCH. Can it be secured without considerable trouble?

Mr. THOM. I do not know. We will see. We will refer it to our accountants and see whether that can be obtained, and if so it shall be done.

Now, I should like right there in respect to that percentage to show how different are the interests of different States in that question of interstate and intrastate business. You take the State of Indiana, I am told the intrastate business of Indiana is 7 per cent only; that the interstate business of Indiana is 93 per cent. The explanation of that is that the producing public of Indiana is dealing with markets of other States or with foreign countries. But take a State like Pennsylvania, there they have got tremendous markets in Pennsylvania. There is Pittsburgh and there is Philadelphia, merely to mention two of them. There is a tremendous movement intrastate in Pennsylvania. You go and get your coal and your minerals and your farm products in Pennsylvania and they have right within that State, and other States, the markets to consume a very large proportion of them, and therefore there is a tremendous intrastate movement there. But take the little place where I was born, which is so small a place that some people wonder in looking on the map whether it is inhabited. It is two counties of Virginia lying between Chesapeake Bay and the Atlantic Ocean, and our markets are Philadelphia and New York.

Mr. ADAMSON. What is the name of your town?

Mr. THOM. I was not born in a town; I was born just as far out in the country as anybody. I was born in Northampton County, Va.

Mr. ADAMSON. I thought you said a little town that nobody would know.

Mr. THOM. No; I said a little strip of land there that some people thought was not inhabited at all when they looked on the map.

That is a great market country. We raise there tremendous quantities of vegetables, potatoes, cabbages, and all sorts of things that are necessary for the food supply of the country, and the Pennsylvania Railroad runs right down to those two counties, and it is not more than two and a half miles from water on either side, possibly, in some parts of it, and they just take the products of that county and carry them right up to Philadelphia and New York. There is our whole livelihood there, practically, an interstate matter.

Mr. ESCH. Your suggestion is in favor of two Federal commissions and regional commissions, the Interstate Commerce Commission, with its administrative functions, and then another commission to

administer the law, and so on, for correction. Then, in addition to that, you wish regional commissions. This whole machinery would involve a very large expenditure, would it not?

Mr. THOM. It would involve an increased expenditure. It would not involve a very large expenditure at all for the United States. It would be an infinitesimal expenditure if it should be considered as perfecting the system of regulation. It would pay for itself a thousand times over—a million times over—but in its first outgo it would involve comparatively little to this Nation.

Mr. ESCH. Of course, with the present system of one Interstate Commerce Commission and then the State commissions, the Federal Government is not involved in the expenditure of the State commissions. If you have the regional commissions, of course that expenditure would fall upon the Federal Government. You have probably heard of the Oklahoma plan and the Philadelphia plan of regional commissions?

Mr. THOM. No, sir; I do not think I have. I think I have heard of the Philadelphia plan. It was read here the other day.

Mr. ESCH. They have adopted part of your plan.

Mr. THOM. If it was the one read here the other day before the United States Chamber of Commerce, I was in the hall; but I have not heard of the Oklahoma plan.

Mr. ESCH. We have been submitted copies of the proposed plan, and there no doubt will be representatives from Oklahoma here to submit it. I need not go into it, but they have adopted the regional plan, as you have done, grouping the country by railroad systems as much as possible and not by geographic State lines. Do you think that would be a preferable method of dividing the country?

Mr. THOM. That is the very view we had suggested. I did not know Oklahoma had done that, but I think that is the way to do it.

Mr. ESCH. In your plan, and in both plans, you permit appeals from the commissions to the Interstate Commerce Commission?

Mr. THOM. Yes, sir.

Mr. ESCH. Do you not think that would multiply instead of diminish the work of the Interstate Commerce Commission?

Mr. THOM. Oh, no; I think it would greatly diminish it. Let us look at that one moment.

Mr. ESCH. I think it is a very material feature of your plan.

Mr. THOM. I think it would very much diminish the work. The Interstate Commerce Commission would not be bothered at all, as they in theory now are, in the preparation of records. They would not have to provide through any agency of their own for hearings. The hearings would all be conducted by an agency established by a statute of the United States, which is as independent a source as the authority of the Interstate Commerce Commission itself. The members of these regional commissions would be selected by the President and confirmed by the Senate. Now, they would conduct all hearings on the subject of these rate questions, and so forth. They would make up their record and when the record came to the Interstate Commerce Commission it would not be necessary for it to read that record. It would only be necessary for the members of the Interstate Commerce Commission to consider the parts of it to which exceptions were made, and they would pass, unless they chose

to do otherwise, on the points that were distinctly defined by these exceptions, one following the other, and therefore what they would have to do in respect to each case would merely be to pass on the controverted points in the case and not to lose themselves in the mazes of the whole thing as they now have to do in their original jurisdiction.

Mr. ESCH. What do you say with reference to expediting hearings under this regional plan?

Mr. THOM. I think it would vastly expedite them.

Mr. ESCH. Over the existing system?

Mr. THOM. Yes, sir; over the existing system, because the regional commissions would be there on the ground, in session all the time, having short distances to travel, being convenient to every shipping center in the whole place where they would hold anywhere within their regions hearings, and they would be able to manage in that separated way the controversies growing up in their sections very much quicker than the Interstate Commerce Commission can do over the whole country at present. I think one of the features of it is the expediting of their hearings, and commerce questions ought always to be expedited.

Mr. ESCH. One of the main reasons you allege for having the Federal incorporation, and having possibly these regional commissions, is to avoid Shreveport cases, is it not?

Mr. THOM. Well, I do not know that I can say just yes to that question, Mr. Esch. I do not think that the question of regional commissions would obviate the arising of such cases as that, except as a result of the whole rate structure everywhere being harmonized, proportioned, and made symmetrical by the one authority.

Mr. ESCH. I can not conceive of the two regional commissions having to deal with a question which involves two regions, two little groups, two little systems.

Mr. THOM. The ultimate power of dealing with any such controversy as that, any such difference as that, is right here in the Interstate Commerce Commission, and if one of those regional commissions took one view of what was the sound adjustment of that question different from what another one did, why that matter would be brought by exceptions right up here to the Interstate Commerce Commission and would be settled by the central authority, and that is one of the arguments that we think shows that there must be a central commission here to harmonize the rate systems and traffic movements throughout the United States so that they may all be on a fair basis of equality.

Mr. ESCH. Are you familiar with the recommendations which have just been made by Chairman Meyer of the Interstate Commerce Commission in an address he made before the State Railway Commissioners in this town?

Mr. THOM. Yes, sir; I saw it in the newspaper.

Mr. ESCH. He recommends the enactment of a law which will permit the State commissions in the States involved in, say the Shreveport cases, sitting with the commission and hearing the various matters, then coming to some agreement. In your opinion would that be a practical matter?

Mr. THOM. No; not only would it not be practical, but it seems to me open to tremendous objections.

Mr. ESCH. What are they?

Mr. THOM. One is the attempt to deal with a national power by delegating a part of its exercise to an authority it can not control. Never before in the history of this country have I seen it defended that a National Government should be dependent upon agencies other than its own for the carrying out of its functions, therefore, I think there is tremendous constitutional objection, I will say; certainly objection from the standpoint of sound governmental policy, to the theory that the National Government must now delegate to some agency that it does not create and that it does not control, a part of its function of preventing discrimination between the classes of traffic and between the various States. That is a fundamental reason.

Now, in addition to that, if that body, so created, being a State commissioner from one State, the State commissioner from another State, and a member of the Interstate Commerce Commission, should have the ultimate power of dealing with the question, then there is complete surrender of the National Government of its function of determining that question. If the power is not to be surrendered into the hands of that committee, and they are to merely make the record on it, and the Interstate Commerce Commission is at last to pass on it, then you have gotten nowhere. The power rests where it is, and it is a mere making a promise to the lips, which is denied to the heart.

The last objection which I will suggest is this: It does not begin to deal with the trouble. The trouble with the States is not merely the trouble of discrimination—I mean the trouble with the State power of making rates is not merely the trouble of discrimination—it always involves the question of a reasonable and proper and fair proportion of the contribution of that portion of the traffic to the general upkeep of the facilities of transportation on which all the people are depending, and the suggestion there ignores entirely the latter condition which is inherent in the situation. It does not at all undertake to deal with the question of whether or not a State may deny its contribution to the proper upkeep of the facilities in which two States are interested, and throws the burden of the proper upkeep on the other or on interstate commerce. So it seems to me, the remedy is partial, and is objectionable from every standpoint.

Mr. ESCH. As I understand you—

Mr. THOM. I do not understand—well, I do not want to say that, either.

Mr. ESCH. As I understand you, you indorse the proposition to give the commission the power to fix a minimum rate.

Mr. THOM. Yes, sir.

Mr. ESCH. In my State—and if I am in error about this, I trust I shall be set straight—the commission fixes the exact rate. Do you think that would be feasible or a practical suggestion with reference to rate making if the—

Mr. THOM. Some one the other day started to ask that question, and withdrew it on an explanation from me. I have certain representative responsibilities here. I hesitate to deal with any question except from that standpoint if I can avoid it. The representative view which I have is that the maximum and minimum rate is the extent of the power which it would be beneficial for the commission

to exercise. Of course, I know, when being on the stand, I am subject to questions as to what my individual views are, and if I am asked that question I will, of course, give an answer.

Mr. ESCH. If you do not care to give it, I will withdraw the question.

Mr. THOM. There is nothing except that—except that I may be running counter to the view I expressed in a representative capacity. I have very strong convictions on the point to which you have alluded, but I should not care to express them unless pressed.

Mr. ESCH. If we give the commission power to fix minimum rates, would it not then be possible for the commission to enable proper transportation on the inland waters of the United States or rivers whose banks are paralleled by railroad lines? Have you thought of that aspect, by fixing a minimum rate?

Mr. THOM. Yes, sir; I think a minimum rate would protect water transportation.

Mr. ESCH. Then, we would give to the Interstate Commerce Commission the power of reviving water transportation on the rivers of the United States?

Mr. THOM. Undoubtedly.

Mr. ESCH. The present interstate commerce act has a provision with reference to water competition that if a railroad lowers its rates to meet water competition, it shall not be thereafter permitted to raise them except on a hearing before the commission, and then only to meet water competition.

Mr. THOM. Yes, sir.

Mr. ESCH. Then, if you grant the right of the commission to fix a minimum rate, you, by that method, can restore water transportation on the inland waters of the United States?

Mr. THOM. Yes, sir; and it is to be greatly desired.

Mr. ESCH. And it would solve the expenditures of our rivers and harbors bill.

Mr. THOM. Yes, sir; I am a disciple of the philosophy that whatever goes to make up the prosperity of the country, the improvement of water transportation facilities, building additional railroads, and any other facility—commercial facility—that is created, it is not contrary to the broad and proper interests of existing railroad companies, because they must grow as communities grow, and if these things build up communities their prosperity will be assured to a vastly greater and to a more wholesome extent than if the community is attempted to be kept down than developed.

Mr. ESCH. I am glad to hear you say that. I think it possible to utilize our inland waterways as Germany utilizes hers—for the carriage of the bulk freight, manufactured products going by rail and paying a higher rate, of course.

Mr. THOM. I think it would be utterly undefensible for the policies of this Government to disregard the natural facilities of its rivers and of its fields in dealing with this question of commerce.

Mr. ESCH. You made mention of the fact that you thought the law should provide for the suspension of rates for a period of 60 days, then allowing, of course, the hearing, and if the commission decided that the increase was just the railroads, of course, would be benefited by the increase; but, if the commission decided that the rate was ex-

cessive, there should be reparation to the shipper to the extent of the excess, instead of the present law which allows a suspension for 10 months. Well, supposing your proposition obtained, and the commission, at the hearing, decided that the rates were excessive for the period beyond the two months.

MR. THOM. That is, of course, for all time.

MR. ESCH. Yes; for all time—that excess would be paid back to the shipper?

MR. THOM. Yes, sir.

MR. ESCH. But the shipper has exacted the increased rate from the party with whom he was dealing, and his reparation is made to him. Why, he would put that into his own pocket as velvet.

MR. THOM. Now, the only thing for the law to do is to find out who paid the rate.

MR. ESCH. That would be a hard thing to do.

MR. THOM. There is no question about that. Now, if the purchaser should be reimbursed, it should be reimbursed to him. What I am getting at is that the proper person should be reimbursed, and the law shall point out who that proper person is.

MR. ESCH. You mentioned the shipper.

MR. THOM. I said that because that is the easiest way to deal with it, and the shipper can make an arrangement that if there is reparation and there shall be a readjustment between them.

MR. ESCH. I suppose that the commission, taking this length of time in deciding these cases on the suspension calendar, is an indication of the great number of such increases. Is that true?

MR. THOM. Well, no. I think it is because of the great pressure of business of all sorts that they can not get at it any quicker. Now, my own judgment is that to take for 10 months a legitimate revenue from the carriers is not to the public interest. It has to be put somewhere. Everything now is reduced to mathematical exactness, with respect to the revenue of the railways, and when you take away anything the loss of pressure of it is felt somewhere, either in decreased maintenance or lack of increased facilities, or in additional burdens somewhere else. Now, I believe, in a matter where most people decide a question of their change in price over the counter—you go in one minute and the price is one thing, and the next minute you find it another—where in any other business there is an immediate change in the price, to suspend a change in the price of transportation for 60 days is as much as the transportation will bear. That will make them hurry things up. You may have to create a special bureau for that particular purpose, but when you have safeguarded the public from disbursements, it seems to me that is as far as you can go.

MR. ESCH. I think I have arrived at my terminus, Mr. Chairman.

THE CHAIRMAN. Senator Brandegee, will you take the witness?

SENATOR BRANDEGEE. Mr. Thom, I will be very brief. The resolution under which we are acting states on page 9 of the printed hearings one of the subjects which we are directed to investigate is all proposed changes in the organization of the Interstate Commerce Commission and the act to regulate commerce.

MR. ADAMSON. Before Senator Brandegee proceeds, it may be that his intimation of brevity is on account of a feeling of constraint

due to the hour and day of the week. If there is anything of that sort, I suggest that we might take a recess at this time?

Senator BRANDEGEE. No; nothing like that. I shall not take more than five minutes.

Mr. ADAMSON. I want to be as good to you as I can.

Senator BRANDEGEE. I thank you.

On that theory the committee has asked you to proceed as the first person before us, because it was understood you had some changes to propose, both in the constitution of the commission and the act to regulate commerce. You have proceeded here for 10 days before use and have been the only witness so far and have outlined in a general, tentative way the changes that you had to suggest to the committee. You have stated, however, earlier in the hearing that your views and recommendations were not final and were subject to modification by anything that might appear in the hearings hereafter that caused you to change your opinion. I do not care to enter upon any cross-examination in detail of the great number of subjects which you have presented—at least I do not at this time. I prefer to hear from some of the publicists and economists and others who are coming afterwards and from some of the witnesses which you have stated you are going to produce in considerable number to expatiate and elaborate upon the different branches of the suggestions you have made. You say they are better informed upon those subjects than you are. I simply want, for my own satisfaction and for the purposes of the record, inasmuch as you put in the record, on page 28, the names of the railway executives who represent, I think you said, about 90 per cent of all the railways in the country, and stated that you appear as the chairman of the advisory committee to those executives—

Mr. THOM. Of the law committee.

Senator BRANDEGEE. Of the law committee—I wanted to ask you who the law committee consisted of?

Mr. THOM. I will try to give their names.

Senator BRANDEGEE. It will be just as well if you will put it into the record later.

Mr. THOM. I will do it now.

Senator BRANDEGEE. About how many are there?

Mr. THOM. There are 11 of them. They are as follows: Mr. E. G. Buckland, vice president and general counsel of the New York, New Haven & Hartford Railroad; Mr. Albert H. Harris, general counsel of the New York Central lines; Judge Walter C. Noyes, general counsel of the Delaware & Hudson; Mr. Francis I. Gowan, general counsel of the Pennsylvania Railroad; Mr. Gardner Lathrop, general solicitor of the Atchison, Topeka & Santa Fe; Mr. Burton Hanson, general counsel of the Chicago, Milwaukee & St. Paul; Mr. N. H. Loomis, general solicitor of the Union Pacific; Mr. Joseph F. Bryson, general counsel of the Missouri, Kansas & Texas; Mr. C. W. Bunn, general counsel of the Northern Pacific; Mr. Chester M. Dawes, general counsel, Chicago, Burlington & Quincy; and myself, Alfred P. Thom, general counsel of the Southern, chairman.

The CHAIRMAN. Are they all general counsel of different railway systems?

Mr. THOM. They are either general counsel or general solicitors. Mr. Lathrop is general solicitor of the Atchison, and Mr. Loomis is general solicitor of the Union Pacific.

Senator BRANDEGEE. By the way, is this 90 per cent of railways that they represent, is that mileage, or in business?

Mr. THOM. It means 90 per cent—I have not calculated the exact percentage—90 per cent, or whatever the proper percentage is, of the gross earnings of railroads in the classes made by the Interstate Commerce Commission that earn as much as \$1,000,000 a year.

Senator BRANDEGEE. You spoke about these suggestions that you present here in their behalf as having been the conclusions reached after much consideration and argument among them. How extensive has that consideration been?

Mr. THOM. It has been very extensive.

Senator BRANDEGEE. Well, over what period of time has it extended?

Mr. THOM. It has extended over 18 months, and has been brought about in this way, that as many of the executives as possible would be gotten together at a time. It was not possible to get all of them together at one time, and the matter would be discussed among those who could be gotten together, and then another opportunity was seized to bring in others until every railroad executive has had the opportunity to come in and to participate in the discussions, and almost all of them have done so.

Senator BRANDEGEE. With the law committee, do you mean?

Mr. THOM. No; I do not. I mean the law committee, while meeting sometimes with the executives, has not met always, but I have met as representative of the law committee; I have been at the meetings of all the executives—that is, all the meetings of the executives.

Senator BRANDEGEE. And you are quite sure that the views you present represent generally the views of all the gentlemen whose names you have given?

Mr. THOM. Yes, sir; you mean of the executives?

Senator BRANDEGEE. Yes; and of the law committee, too?

Mr. THOM. And the law committee, with slight exceptions. For instance, I have told you of the difference in opinion on the question of Federal powers entertained by some lawyers. Well, some of those lawyers differ with my committee and to a slight extent with me, in respect to some of the constitutional powers of the Federal Government, but they have acquiesced in the views that are presented, causing me, however, to acquiesce in the practical desirability of having a certain method of dealing with the issue of stock securities through incorporation rather than through an intent to control the matter under State charters—not that I have not felt, and not that I do not feel a very earnest conviction of the desirability of Federal incorporation from every standpoint, but they have convinced me that we will certainly avoid litigation if we apply a system of governmental regulation of stocks and bonds to the incorporation of the Federal Government, whereas we are likely to invite litigation if we try it otherwise. So that I have agreed with their views that that is a certain way to prevent litigation, while I have not modified in any sense my view of the constitutional powers of the Federal Gov-

ernment. But as all lawyers differ and as all men differ, you will find slight differences of opinion, but this is a consensus of our whole consideration of the subject.

Senator BRANDEGEE. I understand you. Now, as I stated, I consider your statement to be the broad outline of the suggestions that you have to make, subject to modification as the hearings progress?

Mr. THOM. Yes.

Senator BRANDEGEE. And that you will have men appear before the committee who are more expert in the various details of what you have suggested than you are yourself?

Mr. THOM. Yes, sir.

Senator BRANDEGEE. And you have detailed information to lay before us in relation to these matters?

Mr. THOM. Yes, sir.

Senator BRANDEGEE. If that is so, I shall not attempt any sort of cross-examination of you at this time. I have finished, Mr. Chairman.

Mr. SIMS. I want to ask one question, and it will not take but a minute or two, with regard to something I overlooked the other day, and that is this, Mr. Thom: Will national incorporation of the existing railroads have the effect to nullify such State laws as the Pennsylvania and New Jersey full-crew law that you described the other day?

Mr. THOM. That would depend entirely upon your act of incorporation. You could provide either way in respect to matters of that sort. I think you ought to provide for having charge of each situation.

Mr. SIMS. I understood you to make the contention that wherever State laws were of such a character as to harmfully affect or encumber the carrier in its service to another State, by imposing burdens that would affect the service in other States, that that ought to be a subject of national control?

Mr. THOM. I say so now. I understood your question to relate to whether the necessary effect of incorporation would be that. I think that ought to be accomplished by your system of incorporation. I think you can qualify your occupation of the field as you see proper.

Mr. SIMS. Then, you do think that Congress does have the power to virtually repeal such laws as would be proper?

Mr. THOM. Undoubtedly; that has been decided, I think, if you will recall, many times in such decisions as this, that where Congress has not occupied the field of regulations the States may in a certain class of cases act until Congress does, but immediately upon Congress occupying that field the State statutes gives way to it, and undoubtedly the Federal Government has the right to occupy the field in respect to the manning of trains, just as it has occupied the field of determining the rules of liability from a carrier to employees in interstate commerce, and that the State statutes on that subject and State laws on that subject have already given way.

Mr. SIMS. I did not ask you about that. That is all I have to ask.

Mr. ADAMSON. Mr. Chairman, it is very likely that we can not finish with Mr. Thom to-day, and it is Saturday afternoon and we have worked arduously for two weeks, and it is an invariable custom in the

South for white folks and negroes to take Saturday afternoon. I think we had better rest.

The CHAIRMAN. Mr. Hamilton, could you finish your interrogations before we went into executive session?

Mr. HAMILTON. I have only a few questions to ask, but I will defer to the committee. Mr. Thom's argument has been very fully annotated, and, as far as I am concerned, I have but a few questions to ask.

The CHAIRMAN. If that is the case, had you not better conclude now?

Mr. HAMILTON. I am perfectly willing to adjourn.

Mr. ADAMSON. Mr. Thom's answers though have developed a great deal of originality and force, and he sometimes makes a questioner come on with a coming appetite.

Senator BRANDEGEE. Let me suggest, Mr. Chairman, before Judge Adamson makes the motion that he intends—we are not going to sit on Monday and Tuesday, as I understand.

The CHAIRMAN. No.

Senator BRANDEGEE. As Mr. Hamilton would have about three-quarters of an hour before half-past one, if he could proceed and finish up with Mr. Thom, so that we could get through with him, then when the committee convenes again it would be possible to have another witness on the stand, it might be better to postpone the adjournment for a little while.

Mr. ADAMSON. Senator Brandegee, I understand that the chairman wishes to ask Mr. Thom some more questions, and I want the privilege of asking him several.

Senator BRANDEGEE. Oh. I did not know that there were to be further examinations.

Mr. ADAMSON. If he could finish to-day I would be willing to go on, but I am satisfied he can not.

Senator BRANDEGEE. Of course I do not know how long the chairman's questions are going to take.

Mr. ADAMSON. I want to read Mr. Thom some of these good speeches in this book and ask him some more questions.

Senator BRANDEGEE. Of course you gentlemen can regulate it according to your desires.

The CHAIRMAN. I desire, if possible, to bring the examination of the committee to a close to-day, with the privilege to the committee, of course, of going around again and asking such questions as they deem desirable.

Mr. ADAMSON. I move that the committee adjourn.

The question being put, on a rising vote resulted—yeas 3, nays 4. So the motion was lost.

Mr. ADAMSON. I misunderstood the chairman. I want to move to reconsider my motion and withdraw it. He said his purpose was to get around one time and then adjourn. I am willing to do that, if Mr. Hamilton will not stay too long.

Mr. HAMILTON. Mr. Thom, I have one question as bearing upon the line of the investigation by Mr. Cullop. Inasmuch as our exports, during the last fiscal year, amounted to about four and one-half billion dollars, and inasmuch as about two billion dollars of those exports were munitions and potential munitions, it is reason-

able to suppose, is it not, that when they stack arms in Europe, there will be a very decided falling off in export business and in the carrying business of the railroads of this country.

Mr. THOM. That is my expectation.

Mr. HAMILTON. What is the railroad mileage of Canada, Mr. Thom?

Mr. THOM. I can not tell you.

Mr. HAMILTON. Could you tell me approximately?

Mr. THOM. No, I can not. I will get it for you.

Mr. HAMILTON. Do you know anything about the earnings of the railroads of Canada?

Mr. THOM. I do not; I can get that and put it in the record for you.

Mr. HAMILTON. Well, another question. How do the Canadian railroad stocks and bonds—that is, so far as those railroads are constructed by private corporations—compare as investments with the stocks and bonds of the railroads of the United States?

Mr. THOM. Well, I am not well enough versed in that to give you that information, but I will tell you what I know about the Canadian Pacific. That is very high, up in the neighborhood of 175 or 180.

Mr. HAMILTON. And they are doing well over there?

Mr. THOM. Yes.

Mr. HAMILTON. How many transcontinental railroads are there—Canadian transcontinental railroads?

Mr. THOM. There are three, the Grand Trunk, Canadian Pacific, and the Canadian Northern, but you have got me in a field now, I am afraid, where I can not help you, because I have not studied the situation in Canada.

Mr. HAMILTON. The point that I had in mind was, inasmuch as this field has been very fully covered by the inquiries heretofore, to try to institute a comparison as to prosperity between the railroads of Canada and the United States, not knowing much about it myself, but assuming I might get information from you.

Mr. THOM. I will have the information obtained for you and put it in the record.

Mr. HAMILTON. Very well. Now, this Canadian transcontinental railroad, the Grand Trunk Pacific, do you know if that has been finished?

Mr. THOM. I do not.

Mr. HAMILTON. You are not prepared at this time—

Mr. THOM. They tell me it is not quite finished.

Mr. HAMILTON. I understand it is not quite finished. You are not prepared at this time to state, I suppose, the method of the construction of that railroad?

Mr. THOM. No; I would not like to go into the Canadian business, because my information about it would not be of value to you.

Mr. HAMILTON. All right. Can you state—and I assume you can—what the mileage of the strictly intrastate railroads of the United States is?

Mr. THOM. I think—confining it to steam roads?

Mr. HAMILTON. Yes.

Mr. THOM. I think there is none at all.

Mr. HAMILTON. Can you give the mileage of the electric railroads of the United States?

Mr. THOM. No, sir; I can not.

Mr. HAMILTON. Can you state about when these electric lines began to be competitors of the steam lines?

Mr. THOM. I think it has been in the comparatively recent past.

Mr. HAMILTON. It has been, I should imagine, within the last five years—perhaps a little more. I do not know, though.

Mr. THOM. I should say in the last 10 years, anyhow.

Mr. HAMILTON. Has there been a considerable extension of electric roads within recent times?

Mr. THOM. I see that there has been in the West. Take the country which I am interested in—there has been very little, except at one point. There has been a very considerable development of electric railways in competition with the steam railways in the southern part of North Carolina and in the northern part of South Carolina by the Dukes.

Mr. HAMILTON. I notice in my own State (Michigan), Mr. Thom—I have in mind just at this moment a case of a recently constructed electric line. I think they call it a third-rail line. That is a method, is it not?

Mr. THOM. Yes.

Mr. HAMILTON. Which was built between two large towns in the State in competition with two steam railroads which have been doing business for many years, and the electric line is a very prosperous line, apparently taking a good deal of business away from the steam roads. Does it cost more or less to construct one of these electric roads than it does a steam road at the outset?

Mr. THOM. Well, that would be a mere impression. My impression is it costs less, but that is a mere impression. I have never had information on the comparative cost.

Mr. HAMILTON. I should imagine that it costs as much, but that the maintenance might be less, but I have no figures in relation to that. The mileage of electric roads is being considerably increased, and, as a rule, they are in direct competition with the steam roads, and they are being constructed and doing business successfully, apparently, during a period when, as you say, the steam roads have been having difficulties. How do you account for that?

Mr. THOM. It seems to me that there are several ways of accounting for it. In the first place, you do not find the electric roads handling the same character of business or the same volume of business. They do not need the same facilities. You go into one of those States you allude to, and I expect you will find tremendous railroad yards of the steam roads. You will find very small railroad yards of the electric roads.

Mr. HAMILTON. Yes; the steam roads have a larger yard.

Mr. THOM. Yes; that is a very large element in the expense of railroads, the establishment of proper yards and terminals, and in addition to that the steam railroads handle the lowest class of commodities, such as coal, ores of various sorts—raw materials—while the electric roads probably do the city business between the cities, of a higher grade, easier to be handled, and at better rates.

Mr. HAMILTON. My observation is these electric roads do a considerable freight business.

Mr. THOM. Do they not do it in a higher class of freight?

Mr. HAMILTON. I should imagine so; yes, sir.

Mr. THOM. That creates a very much larger percentage.

Mr. HAMILTON. But their stations throughout their lines are good. All of their facilities are excellent, and they are doing an increasing business, I should say, without knowing the actual statistics, and these roads have been constructed directly in competition with the steam roads.

Mr. THOM. My idea is that they are engaging in the cream of the business, on which the country can not sustain itself. The country must sustain itself by the supplies it gets from steam railroads—raw materials, etc.—and you can very well imagine that in a country of cotton, practically, such as the one I have just alluded to down below here, that an electric railway might go to these cotton factories and take away the manufactured goods and carry them to some port or other, and thereby get the very highest-priced traffic.

Mr. HAMILTON. Exactly.

Mr. THOM. Whereas they are not doing anything in the way of sustaining the general growth and supplying the general needs of the country, and those things must be done—in raw materials—must be done at a very much lower rate than the manufactured goods.

Mr. HAMILTON. But, Mr. Thom, is there any reason, so far as power is concerned, or for any other reason, why these electric lines might not increase their freight-carrying power so as to meet the requirements of the various territories which they enter?

Mr. THOM. They can, but when they do it and tap the point of supply which the steam railroads have to tap, in order to supply the human needs, they would then get in a region of the same class of expenses that the steam railroads are under.

Mr. HAMILTON. Steam roads in some instances supplement their own steam power by the use of electricity.

Mr. THOM. At some points; for instance, Manhattan Junction and New York, they have a few.

Mr. HAMILTON. I think that is all for the present, Mr. Thom. Out of deference to the chairman I have hastened my inquiries.

The CHAIRMAN. I did not wish to limit your inquiries at all. The committee will now take a recess until Wednesday at 10 o'clock.

Mr. THOM. I am still on the stand?

The CHAIRMAN. You are still on the stand. Mr. Thom, let me ask you to look over the material which I have put in the record, speeches, and magazine articles, and reports, and particularly resolutions, bills, and amendments upon national incorporation.

Mr. THOM. I have pretty well done that already, but I will do it again between now and next Wednesday.

The CHAIRMAN. Because I would like to question you regarding the national incorporation act.

(The joint committee thereupon, at 1 o'clock p. m., adjourned until Wednesday, December 6, 1916, at 10 o'clock a. m.)

## INTERSTATE AND FOREIGN TRANSPORTATION.

WEDNESDAY, DECEMBER 6, 1916.

CONGRESS OF THE UNITED STATES,  
JOINT SUBCOMMITTEE ON INTERSTATE COMMERCE,  
ROOM 326 SENATE OFFICE BUILDING,  
*Washington, D. C.*

The joint subcommittee met at 10 o'clock a. m., pursuant to adjournment, Senator Francis G. Newlands presiding; also Vice Chairman William C. Adamson.

The CHAIRMAN. The committee will come to order. It has been suggested that Mr. Thelen, who has been here for some time be heard to-day on behalf of the State railway commissions, and that Mr. W. J. Bryan, who is here for a couple of days only, and who leaves to-morrow evening, should be heard to-morrow, and then we should continue the examination of Mr. Thom and complete it.

Mr. HAMILTON. Mr. Chairman, what branch of the subject does Mr. Bryan desire to be heard upon?

The CHAIRMAN. He desires to be heard against the centralization of power in the National Government over transportation.

Mr. ADAMSON. I suggest that under that arrangement Mr. Thom might as well be relieved for the balance of the week if he wants to do anything else.

The CHAIRMAN. It is possible we might go on with him on Saturday, might we not?

Mr. ADAMSON. I imagine all these gentlemen will get through by Saturday.

The CHAIRMAN. If that arrangement is satisfactory to the committee, and there is no objection, we will hear Mr. Thelen this morning.

Senator UNDERWOOD. Mr. Chairman, have you consulted Mr. Thom about it?

The CHAIRMAN. That will suit his convenience.

Mr. ADAMSON. We had just finished one round, and before we start another round of cross-examination, Mr. Thom, we are in a position to let you off.

The CHAIRMAN. If there is no objection, the committee will now hear Mr. Thelen.

Mr. THOM. Mr. Chairman, does the committee know anything about what it will do in the way of holding sessions next week, or has it arrived at any conclusion in that respect? The reason I am asking the question is that I have made an engagement for Monday and Tuesday of next week, assuming from what happened this week it will not hold sessions during those two days. Of course, my

engagement is subject to cancellation, but I would like to know what the plans of the committee are with regard to next week.

The CHAIRMAN. The only determination the committee has thus far reached has been to hold meetings to-day, Thursday, and Saturday of this week. The committee has come to no conclusion with reference to further meetings.

Mr. ADAMSON. Will it suit Mr. Thom's convenience if we hold an executive session on Saturday and notify him afterwards? We can determine what the course will be and then notify him.

Mr. THOM. That will be satisfactory.

Senator UNDERWOOD. It seems to me that Mr. Thom has been here nearly two weeks, and if he has business engagements and does not wish to be heard on Monday and Tuesday, there is no reason why we could not hear him later in the week.

Senator CUMMINS. Mr. Brookhart is here and has been here for two weeks, and I would like very much if he could follow Mr. Thelen or Mr. Bryan, for I realize that Mr. Bryan, being here only for a day or two, should be here to-morrow morning, but after Mr. Thelen finishes I would like Mr. Brookhart to be heard.

Mr. ADAMSON. Then I suggest that we notify Mr. Thom later as to the decision of the committee.

The CHAIRMAN. It may be possible to go on with Mr. Thom on Saturday. You will be free on Saturday, will you, Mr. Thom?

Mr. THOM. Yes, sir.

The CHAIRMAN. Very well; we will notify Mr. Thom, and he will understand that he may not be called upon on Monday or Tuesday. Mr. Thom, you will be ready on Wednesday, as I understand it, if the committee concludes to go on with you?

Mr. THOM. Yes, sir.

Mr. ADAMSON. Mr. Brookhart is sitting back here, and there is no use calling Mr. Thom back here on Saturday. We have now four witnesses scheduled, and before we take up Mr. Thom again you know they will take four or five days.

The CHAIRMAN. What is the sense of the committee?

Senator CUMMINS. I think we ought to do that; I think we ought to hear Mr. Thelen, Mr. Bryan, and Mr. Brookhart, and their examinations will require four or five days probably altogether.

Senator BRANDEGEE. I think we can excuse Mr. Thom until he receives further notice.

The CHAIRMAN. If there is no objection, that order will be made, and the understanding is that we will proceed with Mr. Thelen, Mr. Bryan, and Mr. Brookhart.

#### **STATEMENT OF MR. MAX THELEN, PRESIDENT CALIFORNIA RAILROAD COMMISSION.**

Mr. THELEN. Mr. Chairman and members of the committee, speaking for the National Association of Railway Commissioners, of which I have the honor to be the president, and also for the railroad commission of California, in which I have the honor to occupy a similar position, I desire to express our appreciation for this opportunity to appear before you gentlemen and to offer such suggestions as occur to us in connection with the solution of the tremendously

important problems which are now under consideration by this committee.

We regard it, gentlemen, not merely as a privilege but also as a duty arising from our responsible positions in the various States of the Union, to come before you and to give to you such assistance, if any, as we can from the experience which we have had in the regulation of railroads and other classes of public utilities in the various States of the Union.

The National Association of Railway Commissioners is an association composed of the State railroad and public-service commissions of the various States of the Union. At present all except two States of the Union have either a State railroad commission or a State public-service commission, and all of those commissions are members of the National Association of Railroad Commissioners. The association has been in existence for over 20 years. The purpose of the association is the discussion of the problems affecting the regulation of railroads and other classes of public utilities in the hope that as a result of those discussions certain constructive policies might be adopted by the various States of the Union.

At its convention held in Washington a few weeks ago the National Association of Railway Commissioners authorized the committee on State and Federal legislation to appear before you gentlemen and to offer all possible assistance to you. The members of this committee are the Hon. Joseph L. Bristow, chairman of the Public Utilities Commission of Kansas, who is chairman of the committee; Hon. W. G. Busby, who is chairman of the Public Utilities Commission of Missouri; Hon. C. M. Candler, who is chairman of the railway commission of Georgia; Hon. L. B. Finn, who is chairman of the railroad commission of Kentucky; Mr. Carl Jackson, member of the railroad commission of Wisconsin; Hon. Edward C. Niles, chairman of the Public Service Commission of the State of New Hampshire; and Judge Owen Thompson, member of the Public Utilities Commission of Illinois; and the president of the association as ex officio member.

We are here, gentlemen, not in hostility but in a spirit of helpfulness. We want to do whatever we can to be of assistance to you, and right at this point, speaking for my own commission, the Railroad Commission of California, I want to say that if there is any special problem which develops during the course of these hearings, which problem you think should receive special investigation, not merely the commissioners but the heads of our various departments, men who are trained in the regulation of public utilities, and to a very considerable extent in their construction, will be only too glad to be of service to you as a matter of courtesy and for the good of the cause.

Now, with these few opening remarks, I wish to address myself directly to the argument which Mr. Thom has presented. You will find, gentlemen, that my style of presentation can not compare in any way with the beautiful oratory of which Mr. Thom has shown himself a master. The men of the West can not hope to in any way compete, when it comes to eloquence, with the gentlemen of the South, so, without any question at all, the prize for eloquence belongs to them; and I shall address myself in the simple, direct way—the

way we have in the West—to the consideration of these various problems.

Mr. Thom, as you will remember, divided his argument into three portions, one presented on each day. On the first day he discussed the financial situation, as far as the railroads are concerned; he referred to their credit; he referred to their necessity for additional funds, and expressed some doubt as to whether they would be able to secure these additional funds for capital, extensions, and otherwise under existing conditions. On the second day he addressed himself to the cause of the existing conditions, to the cause of impaired railroad financial credit, and he presented to you at that time an analysis in which he charged that the cause of impaired railroad credit is principally regulation—regulation by the Nation and, even more particularly, regulation by the States. On the third day he presented to you his nine remedies, which, as I understood it, are a first installment; it is the first part of a program which the railroads ultimately desire to present to this committee and to Congress.

Referring now for a moment to the first day's presentation, I am glad to say, in the interest of harmony, that we agree with the railroads in part. We agree with them that the railroads have been derelict in their duty of supplying sufficient cars, equipment and other facilities to the shipping public; we agree with them that if it is true that the panic of plenty of 1917 and the present high cost of living are due to a failure to supply the necessary transportation facilities, then the credit for that condition rests with the railroads. We agree, furthermore, that it will be necessary for the railroads, in the immediate future and thereafter, to secure large amounts of additional capital, not merely for extensions into new territory, but also for additions and betterments to the existing railroads. To that extent, we agree with them. But when it comes to the claim that the financial credit of all the railroads is greatly impaired and that the whole railroad situation has gone to the damnation bow wows, we distinctly disagree with them.

I do not wish to tire you gentlemen with long reports of statistics with reference to the financial condition of the railroads; I know that statistics are usually very dry. I think, however, that I might serve my general purpose in this respect by reading a paragraph from an address which was delivered by Judge Robert R. Prentis, a member of the highest court of the State of Virginia, before the National Association of Railway Commissioners at its last convention. In this address Judge Prentis says, in part—

Mr. ESCH. Was he not the president of your association at the time he delivered that address?

Mr. THELEN. He was the president of the association and served with distinguished credit [reading]:

While it may not be entirely fair to compare the present large earnings with the earnings for the preceding 12 years, without some reference to the sudden prosperity, attributed by many altogether to the European war, it is interesting to note that the total operating revenues have, with some fluctuations, increased from \$1,975,174,091 in 1904 to the sum of \$3,396,808,234 in 1916, and the average per mile of line from \$9,306 in 1904 to \$14,818 in 1916. During that period the operating expenses per mile of line have increased from \$6,308 in 1904 to \$9,684 in 1916, and the net operating revenue during the same period has increased from \$2,998 in 1904 to \$5,134 in 1916—that is, the operating expenses have increased 53 per cent, while the operating revenue has increased 71 per cent.

Judge Prentis then refers to the operating ratio for 1916, which was 65.4 per cent. He states that the lowest operating ratio of any year within the period indicated was in 1916, and that the highest was in 1914, when it was 72.2 per cent, and the next lowest was 1906, when it was 66 per cent.

Judge Prentis also refers to an editorial in the financial column of the New York Times, in the issue of October 9, 1916. In this edition of the paper the financial editor says:

It is a habit to put all the railroads in a group and of late it has been a habit to talk of all railroads as though they were subject to the great difficulties under which some roads, even many, are laboring. That is a false market point of view. There are railroads in a very strong position—railroads which year after year have paid good dividends and which to-day are earning those dividends twice over and in some cases more—

showing the fallacy of considering the railroad problem as a whole, when some railroads are entirely prosperous while others are having difficulty.

Why should there not be confidence in the ability of such properties to withstand the effects of regulation, and to continue to give good returns to their stockholders? Moreover, why is it not reasonable to recognize the fact that a road once poor is not necessarily poor forever? Big earnings month after month with no sign of diminution are surely a cure for months of the other sort. They are, moreover, the best sort of offset for such added burdens as that imposed by the eight-hour law.

I desire to make just one further brief reference to this speech of Judge Prentis. I refer to that part of the speech in which there is presented a table compiled from an editorial in the Financial Age, a New York financial paper, of October 21, 1916, entitled "Evidences of Railroad Prosperity." In this table there is a comparison of the income available for dividends earned by the railroads named, in two fiscal years; that is, the year ending June 30, 1915, and the year ending June 30, 1916. I desire to draw your attention in this connection not merely to the splendid showing in 1916, but also to the favorable showing in 1915. Take, for instance, the Union Pacific. They had available in 1915, and when I refer to these years I mean in each instance the fiscal year, 11 per cent for dividends on common stock, and in 1916 they had 15.65 per cent. The Southern Pacific had in 1915 7.2 per cent, and in 1916 11 per cent. The Southern Pacific is one of the California railroads, and before I finish I shall go, in some detail, into their financial affairs during the last few years, so that you may judge, if you will, whether or not regulation has been unfair to them, or whether it has impaired their credit. The Santa Fe had available in 1915 9.2 per cent for dividends on their common stock, and in 1916 12.3 per cent. The St. Paul had in 1915 3.28 per cent, and in 1916 7.33 per cent. Take the Northern Pacific; in 1915 they had 7.58 per cent, and in 1916 they had 10.47 per cent. I do not want to tire you gentlemen by reading all these figures.

These are illustrative, and if I may have permission I will just insert the table in the record so that I may pass on to other matters.

Senator BRANDEGEE. On what page does that table appear?

Mr. THELEN. This is on page 12 of this speech.

The CHAIRMAN. That may be done, Mr. Thelen, if that be the pleasure of the committee.

Mr. ADAMSON. Why not just put that speech into the record?

Mr. THELEN. I am entirely willing to do so, if that suits the pleasure of the committee.

Mr. ADAMSON. I suggest that you put it in.

The CHAIRMAN. He can put in the whole speech, or just such parts of it as he may deem pertinent.

Mr. HAMILTON. I see no advantage in putting the whole speech in. The gentleman is selecting the parts which he wishes to bring to our attention.

Mr. ADAMSON. Several members of the committee think that we would find some value in other parts of it.

Mr. HAMILTON. Very well.

Senator CUMMINGS. How long is it—the speech?

Mr. THELEN. The speech is 19 pages, and it deals almost exclusively with the present railroad problems, the solutions offered by the railroads, and Judge Prentis's comments.

The CHAIRMAN. Do you wish it all to go in as pertaining to this inquiry, or only parts of it?

Mr. THELEN. I might follow Judge Adamson's suggestion, if it meets with your pleasure, and have it all go in.

The CHAIRMAN. Very well.

(The paper above referred to appears in full below, as follows:)

ANNUAL ADDRESS OF ROBERT R. PRENTIS, PRESIDENT NATIONAL ASSOCIATION OF RAILWAY COMMISSIONERS, WASHINGTON, D. C., NOVEMBER 14, 1916.

#### GENTLEMEN OF THE CONVENTION :

When I first began to attend the meetings of this association about eight years ago, I regarded them as valuable chiefly because informing and educational. I thought it well for the members of the Interstate Commerce Commission and the State commissioners to assemble once a year for the purpose of discussing their difficulties and comparing experiences, with the view of improving their own work in their several jurisdictions. I still think so.

As the years have passed, however, and while, as it seems to me, the unwise tendency to change our Government from the representative to the popular form, I have learned to regard the National Association of Railway Commissioners and other similar associations as performing a very much more significant and valuable function in our scheme of government.

I first received this suggestion from an article in *The New Republic*, referring to the National Education Association. That article said that organizations such as the National Education Association are coming to occupy an unexpectedly important place in American national life. That—

"They are becoming the vehicle whereby Americans meet for joint deliberation. They constitute the gatherings at which public opinion is formed, public questions ventilated, and an essential specific interest or profession adjusted to its task in the national economy. The historian of the future, as he surveys the modifications in American political institutions during the past and the coming half century, will remark the slow but inexorable decline of our group of representative institutions and the corresponding building up of another. The legislatures are ceasing to have any representative value and are ceasing to exercise any formative effect on public opinion. They are being poisoned by a kind of political corruption which they have neither the will nor the ability to correct. The work which they once performed is being passed on to great national organizations of teachers, social workers, business and professional men, farmers and trade-unionists. These organizations are the germinating centers of American opinion; they initiate the new programs and put a quietus on the old ones. For the present they do this work unofficially, but eventually they will be recognized in the official organization as the really representative members of our political body."

While I do not think it now necessary to consider whether or not these bodies shall ever be recognized in the official organization of the Government, I do believe that the observations quoted clearly state a great truth, not as yet generally perceived or recognized. I further feel that no national organization

has exercised a greater or more beneficial influence upon Federal and State legislation than the National Association of Railway Commissioners.

In view of proposed legislation, some of which is actually pending before Congress, designed to destroy State regulation of railways, it is of the highest importance that we should approach the consideration of the great questions involved therein without selfishness and actuated only by a desire to serve the country.

There is a fully organized movement having for its ultimate object nothing less than the absolute elimination of the States and the State commissions from all jurisdiction over intrastate rates of the railroads.

At the time the act to regulate commerce was enacted such a proposition would have been promptly rejected as plainly violative of the United States Constitution. Recent decisions of the Supreme Court of the United States, however, have encouraged the view that under the commerce clause of the Constitution the Congress may have the power to take actual control of all rates upon the new theory that railway rates are so intimately related to, and so directly affect, each other as to make it impossible properly to regulate interstate rates without at the same time taking control of intrastate rates.

The determination of this great question should not be based upon any mere local or selfish considerations, or any mere insistence upon State's rights. It should be determined upon great broad general principles, looking only to the general welfare; not that even such considerations will justify a plain violation of the Constitution, for if the change is to be made it should be done in due and orderly manner, by amending the Constitution if necessary, and not by violating the Constitution as a matter of expediency.

The officials of the great transportation lines of the country, always restive under any and every sort of control, are behind the movement. They have enlisted the support of a large number of newspapers and magazines, employed able counsel, and have prepared for the great controversy which such a proposition precipitates. The danger is that they may win at the first onslaught, but if so it will be only because those who believe such a change unwise are in a state of absolute unpreparedness. If the question is to be fairly and fully discussed and presented to the Congress, poorly as they are prepared therefor it must be done by the State commissions. Therefore this is the work to which the present hour summons us.

If the effort shall succeed then questions regarded as settled from the foundation of the Government will be unsettled and the great accomplishments of the States of this Union for the last 30 years in their endeavor to exercise efficient control over the public-service corporations which they have created and fostered, will have become unavailing and obsolete.

In this connection it becomes my duty to call your special attention to Public Resolution No. 25, Sixty-fourth Congress, and I think it proper to emphasize some views which I have with reference thereto. This resolution was introduced by Senator Newlands as Joint Senate Resolution No. 60, and reads as follows:

"Joint resolution creating a joint subcommittee from the membership of the Senate Committee on Interstate Commerce and the House Committee on Interstate and Foreign Commerce to investigate the conditions relating to interstate and foreign commerce and the necessity of further legislation relating thereto, and defining the powers and duties of such subcommittee.

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Interstate Commerce Committee of the Senate and the Committee of the House of Representatives on Interstate and Foreign Commerce, through a joint subcommittee to consist of five Senators and five Representatives, who shall be selected by said committees, respectively, be, and they hereby are, appointed to investigate the subject of the Government control and regulation of interstate and foreign transportation, the efficiency of the existing system in protecting the rights of shippers and carriers and in promoting the public interest, the incorporation or control of the incorporation of carriers, and all proposed changes in the organization of the Interstate Commerce Commission and the act to regulate commerce, also the subject of Government ownership of all public utilities, such as telegraph, wireless, cable, telephone, express companies, and railroads engaged in interstate and foreign commerce and report as to the wisdom or feasibility of Government ownership of such utilities and as to the comparative worth and efficiency of Government regulation and control as compared with Government ownership and operation, with authority to sit during the recess of Congress and with power to summon

witnesses, to administer oaths, and to require the various departments, commissions, and other Government agencies of the United States to furnish such information and render such assistance as may, in the judgment of the joint subcommittee, be deemed desirable; to appoint necessary experts, clerks, and stenographers, and to do whatever is necessary for a full and comprehensive examination and study of the subject and report to Congress on or before the second Monday in January, 1917; that the sum of \$24,000, or so much thereof as is necessary to carry out the purposes of this resolution and to pay the necessary expenses of the subcommittee and its members, is hereby appropriated out of any money in the Treasury not otherwise appropriated. Said appropriation shall be immediately available and shall be paid out on the audit and order of the chairman or acting chairman of said subcommittee, which audit and order shall be conclusive and binding upon all departments as to the correctness of the accounts of such subcommittee."

Under that resolution a joint subcommittee, consisting of five Senators and five Representatives, has been appointed, and they have publicly announced that they will begin their investigations on November 20, 1916.

The adoption of this resolution by the Congress indicates the very great progress which has been made in the country in the deliberate and concerted effort to destroy the State commissions as regulating bodies, including the taking over by the Federal Government of exclusive jurisdiction to regulate intrastate rates.

The movement has been underway for several years, and is inspired by the great railway organizations of the country. Through the press and through many other great organizations they have endeavored to create a sentiment so overwhelming as to convince the Congress that the time has come, if the railways are to continue efficient public service, to make this tremendous change.

As far back as the 25th day of February, 1916, in the hearing before the Committee on Interstate and Foreign Commerce of the House of Representatives, while the resolution was under consideration by that committee, these facts were made a matter of record.

There is a railway executive advisory committee, of which Mr. Frank Trumbull, chairman of the board of the Chesapeake & Ohio Railway Co., is chairman, and 13 railway presidents of the large lines are members, and for which the Hon. Alfred P. Thom, general counsel of the Southern Railway Co. is counsel.

They represent between 83 and 84 per cent of the railroad mileage of the United States and systems extending from the Atlantic to the Pacific and from British Columbia to the Gulf of Mexico; that is, lines which, combined, cover the entire country. At that time a definite plan for the accomplishment of their purpose was outlined to the committee.

Since then it has been publicly reiterated by Mr. Trumbull—

This plan embodies two main features:

First. That there be a Federal incorporation law, under which every railway company in this country which is engaged in interstate commerce—and all of them will be construed to be so engaged—shall be required to incorporate. Such companies are to be given no option as to this, but incorporation under the proposed act of Congress is to be made compulsory, and thus the entire control of such companies, including their rates, intra and interstate, and their stock and bond issues, is to be vested in the agencies of the Federal Government.

Second. Then it is proposed that in place of the Interstate Commerce Commission there shall be two commissions, one to be called the Interstate Commerce Commission, which is to be the supreme body, in charge of all the powers of regulation, on appeal as to some of such powers and directly as to others. Another commission is to be organized, which it is suggested shall be known as the Federal Railroad Commission, whose members shall be presidential appointees. This new commission is to be vested with the power and charged with the duty of detection, correction, and prosecution, and those feeling aggrieved by their conclusions are to have the right to have them reviewed by the Interstate Commerce Commission.

In addition to these two great organizations, they propose, as a method of getting closer to the people in the various sections of the country and as a substitute for the present State commissions, that there shall be regional boards in every transportation region that the Congress may divide the country into; that their offices shall be in such localities, these bodies to be authorized

to take evidence as to all the graver and more important questions which remain within the jurisdiction of the Interstate Commerce Commission, including the making of rates and the establishment of proper relations of rates between localities; they are also to take evidence in any case that shall be pending before the Interstate Commerce Commission as commissioners in chancery would do, reporting their conclusions to the Interstate Commerce Commission, subject to exception; the orders and conclusions of these regional boards, if not excepted to, are to be effective without further action by the Interstate Commerce Commission, unless that commission should itself see some reason for ordering rehearings. If they are excepted to by shippers, representatives of localities or by the carriers, then such differences are to be argued before and settled by the Interstate Commerce Commission.

This plan, as will be observed, is most ambitious, and the manifest purpose of this vast machinery to be organized under Federal legislation is to relieve the railway companies from any effective supervision by the States. The railway companies, as above stated, have organized their executive advisory committee, employed eminent counsel, and have fully prepared themselves to present their views to the subcommittee.

I wish to emphasize my view that the issue thus presented should be approached in no narrow, selfish spirit by the National Association of Railway Commissioners, and should be considered upon its merits. We may expect its advocates to present it with the greatest possible force and ability.

While intensely interested in promoting every possible improvement in the present situation, in favor of strengthening the Interstate Commerce Commission to the fullest extent necessary, and anxious that all of the necessary Federal powers shall be exercised, it seems to me that this proposition, considered in its entirety, is in the highest degree unwise, and that its effect will of necessity be retrogressive instead of progressive.

Most of the true progress of this world is made, not by tearing down, but by building up, by construction, not by destruction.

For 30 years the Federal and State Governments have been enacting laws and administering them with the view of exercising efficient control over the rates and practices of the railroads. A long catalog of the benefits which have arisen from such regulation can easily be made. Forty-six States of the Union at great expense have organized commissions for the purpose of controlling intrastate rates, and exercising their constitutional powers hitherto conceded to them. The proposition is to take over all the important jurisdiction of these local commissions and concentrate the power in two Federal commissions in the city of Washington. Then, knowing that the Interstate Commerce Commission is already overwhelmed with its work, and apparently realizing the utter futility of expecting central commissioners in Washington to deal effectively with all of the many and varied questions that arise locally all over the country, it is proposed to establish regional boards in various sections of the country which shall be subordinate to the central authority at Washington. In other words they see that just as soon as they tear down the existing system they must immediately commence to rebuild a vast hydra-headed administrative bureau, with two big heads and many small ones, which will correspond in many particulars with the very organizations we already have.

It is impossible for us to escape the conclusion that if these suggestions shall be adopted the cause of public regulation will be practically just where it was 30 years ago. It seems to me that experience has demonstrated that all the powers of all the States combined with all the powers of the Federal Government must be exercised if public regulation is to be effective.

Since the decision of the Shreveport case (*Houston East & West Texas Railway Co., etc., v. United States*, 234 U. S. 342), which apparently authorizes the Interstate Commerce Commission to remove discrimination between localities and shippers by requiring railway companies to make intra and interstate rates conform, it is difficult to understand the immediate need for adding to the powers of the Federal commission as to removing such discriminations. Already the Interstate Commerce Commission has in several cases administered the very relief which the carriers claim should be afforded by new legislation, and it is claimed already has jurisdiction to correct the very evil which it is alleged to exist. It is, of course, exceedingly important that there shall be no conflict of "jurisdiction between the Federal and the State authorities, and I am sure that I give expression to the sentiment of a very large majority of the State commissioners when I say that they and this association is now

and has always been prepared to cooperate with the Federal authorities in the fullest possible degree for the purpose of avoiding such conflict.

The Hon. Alfred P. Thom, as the counsel for the railway executive committee, representing between 83 and 84 per cent of the railway mileage of the United States, said this to the committee above referred to:

"We realize that we have no right to approach this problem from the standpoint of the private interests of the railroads. We realize that unless we can present a plan that commends itself because it is best for the public interest that we will have no standing. We have tried to separate ourselves from the standpoint of a mere private interest in this matter, and to appreciate the spirit of the American people, which is devoted to the principle of regulation. We accept in its entirety the wisdom of that policy, and our effort will not be to present a plan which we think is a plan in the selfish interests of the railroads, but to present a plan which we believe is best for the whole American people, for the preservation of its commercial supremacy, and for the accommodation of its traffic."

These are no "weasel" words:

Mr. Thom and I have been warm personal friends since our college days, and I know him to be a man of commanding ability, with practical but high ideals upon all great public questions. I must, of course, examine his views, however, knowing that he would not be human if they were not affected by his employment and his environment. Giving full faith to his statement that they accept in its entirety the wisdom of the American policy and that they appreciate the spirit of the American people, which is devoted to the principle of regulation, how is it that he can expect the American people, as represented by the commissions of 46 of the States, to accept without the most vigorous protest and contest a governmental plan which will practically nullify all of their efforts for the past 30 years? I venture the suggestion that the opportunity has come for them by some affirmative action to make good their avowment of their acceptance of the principle of regulation to which the American people is devoted. That principle, firmly fixed in the thought and legislation of this people, is that the Federal Government shall do all of these things which it can best do, and that the local authorities under the jurisdiction of the State governments shall do those things which they can best do and that local rates and local matters can be best regulated by those most familiar with local conditions. I believe that they have greatly exaggerated the difficulties of the present situation. Are the discriminations between interstate and intrastate rates as great to-day as they were before the intervention of the Federal and State authorities? Have they forgotten the free-pass abuses, the rebates, the special rates, the discriminations, the competition, the rate wars, from the burden of which public regulation has relieved them?

It is erroneously assumed by many that most of the cases of discrimination are discriminations brought about by the action of the State commissions in favor of intrastate rates and against interstate rates. It will, however, not be difficult to find numerous interstate rates far lower, proportionately, than the intrastate rates, and hence discriminative against intrastate business in the same sense as is complained of. Indeed, it may be stated as a general proposition that the general scale of interstate rates, or long-distance rates, is much lower than the general scale of intrastate rates. (I will say, by way of parenthesis, that I do not wish to be understood as saying that I think, as a whole, that the relatively low long-distance interstate rates are injurious to the trade and prosperity of the country. It is these rates that have brought about competition between the large distributing centers of our vast country, and this competition has been beneficial to consumers all over the country.)

Returning to the question of discrimination, it must be noted that the mere fact that one rate is lower than another is of itself no proof of the reasonableness of either the higher or the lower rate. If justice is to be done by removing discrimination, then there should first be a careful inquiry to determine which of these rates, if either, is the just and reasonable one, and I venture nothing in saying that upon fair investigation the lower rate, or a different rate, will be found to be just and reasonable just as often, if not more frequently, than the higher rate. So let it not be assumed that the alleged flagrant cases of discrimination so often referred to are by any means the only cases of discrimination, and let it be understood that there are many cases of discrimination brought about, not by the State commissions, but by the carriers, either inadvertently or in their effort to attract business.

So far as I am informed, and I have read all that has come to me on the subject, I know of only three instances, alleged to be flagrant, in which it is

alleged that the State commissions have undertaken consciously to discriminate in favor of State rates as against interstate shipments, and it is by the carriers claimed that the remedy for these flagrant cases of discrimination, without additional legislation, is already vested in the Interstate Commerce Commission. If there shall be proper cooperation between State and Federal commissions and the railway companies, is there any practical obstacle under the law as it exists to-day which prevents the removal, after proper investigation, of the difficulties and discriminations of which the carriers complain? I repeat, is it not far better and more likely to accord with the views of the American people and more likely to afford prompt and efficient relief to build up from what we have rather than to tear down for the purpose of immediately rebuilding something very similar to the existing system?

Is there any pressing need at this time for any radical change?

In Bulletin No. 18 of the Railway Business Association, which was issued during the past year, entitled "Defects in Railway Regulation," a pamphlet which has been widely circulated in the country by a national organization composed of dealers in railway supplies, the following statement, emphasized in bold type, appears:

"Expenses have arisen faster than earnings, and no branch of the Government performs the function of providing enlarged revenues to meet the higher cost. It is vital to national prosperity that this defect in regulation be corrected."

I desire to place in contrast with this statement (which I think would not have been made if those who are responsible for it had known of the enormous recent increase in the revenues of the carriers) certain figures from bulletins issued by the Bureau of Railway Economics, established as you know by the railways of the United States for the scientific study of transportation problems. These bulletins show that the increased operating revenues of the railways have already performed the function of providing the larger revenues, which the authors of the statement inferentially criticized the Government for failing to provide.

While it may not be entirely fair to compare the present large earnings with the earnings for the preceding 12 years, without some reference to the sudden prosperity, attributed by many altogether to the European war, it is interesting to note that the total operating revenues have with some fluctuations increased from \$1,975,174,091 in 1904 to the sum of \$3,396,808,234 in 1916, and the average per mile of line from \$9,306 in 1904 to \$14,818 in 1916. During that period the operating expenses per mile of line have increased from \$6,308 in 1904 to \$9,684 in 1916, and the net operating revenue during the same period has increased from \$2,998 in 1904 to \$5,134 in 1916; that is, the operating expenses have increased 53 per cent while the operating revenue has increased 71 per cent.

This increase is comparatively recent, for while in 1914 the net operating revenue per mile of line was \$3,443, in 1915 \$3,747, in 1916, as above stated, it was \$5,134. But there has been no diminution in the volume of these earnings since the statement for the last fiscal year was made up, and the reports for July, August, September, and October continue to show greatly increased railway earnings. There is every reason for feeling assured that the current fiscal year will show still greater net earnings.

We can all sympathize with Mr. Justice Hughes in his appealing cry of protest against the "delusive exactness" of the mass of figures which the railway accountants and statisticians toss at us whenever we come to consider large problems in connection with our work. I think that we can say as to these figures, however, that they have an illuminating exactness which demonstrates that the statement of the Railway Business Association, which I have above quoted, while true as applied to some previous years, is now untrue, for it plainly appears that recently earnings have risen very much faster than expenses and that they have also risen much faster than investments in railway properties. I know that it is said that the figures of 1916 represent an abnormal condition and that possibly the present prosperity of the railways will not continue. Whether this be true or not, the future only can determine. The fact is, however, that the figures for 1915, the previous year, showed the largest total operating revenue per mile of line of any year between 1904 and 1916, save for the year 1913, and the net operating revenue per mile of line showed a larger amount than for any year within the period indicated, except for the years 1910 and 1913. The operating ratio for 1916 was 65.4 per cent, the lowest operating ratio of any year within the period indicated, the highest having been

for 1914, when it was 72.2 per cent, and the next lowest within the period indicated having been in 1906, when it was 66 per cent.

It seems to me that it is perfectly apparent, however great the perplexities and difficulties which have beset the railway managers within the past 12 years, that they have but suffered as other men have suffered, and that their business has only been affected in the same way that other business enterprises have been affected from year to year and from period to period. The merchant, the manufacturer, the man living upon a fixed salary have all suffered from increase in the cost of living and doing business. So have the railroads, but the latter have suffered no worse, and in view of the figures I have referred to and the proper inferences to be drawn therefrom, the suggestion that they are being bankrupted by oppressive State legislation or because of the conflicts of jurisdiction between the Federal commission and the State commission has no sufficient justification. There are prosperous railroads whose prosperity is brought about because they are well located, well managed, not overcapitalized, and because they have succeeded in securing a large and profitable business; and there are railroads which by reason of poor location, poor management, and overcapitalization have failed to secure a profitable business and hence are not prosperous, but the average prosperity of the railways compares favorably with the average prosperity of the other business enterprises of the country.

In 1915, largely as the consequence of concentration of traffic, the New York Central carried 2,500,000,000 more tons of freight 1 mile than it did in the preceding year at an actual outlay for conducting transportation of \$3,000,000 less. We see in the financial columns of the newspapers such statements as these: That the Union Pacific is now earning at a rate which, if carried out for the full year, will give it about 20 per cent for the common stock, and that the New York Central promises to yield about 22 per cent for dividends on its stock, and that the Erie will earn for the current year about 20 per cent available for dividends on the first preferred—that is, five times what it is entitled to receive in any one year. These results are typical, not exceptional, and many of the other large railway systems of the country are likewise prospering.

While considering the encouraging features of the general railway situation let us not forget the enormous economies, for which the managers of the railways are entitled to unstinted praise, which have recently been brought about by better loading of cars and the increasing of train loads. For instance, the figures for traffic on the Chicago & North Western Railway show that the train load has been raised from an average of 210 tons not longer ago than 1910 to an average of 491 tons for the year ending June 30, 1916, and this enormous increase in the average train load has brought an increase in the revenue per train mile run from \$2.32 to \$3.28, and this in spite of the fact that the average freight rate per ton-mile was lower in the latter year than the former.

This is only one example out of many like it which the statistics disclose.

I am aware that there are many other facts to be considered besides these facts shown by the figures which I have quoted.

I have observed that one of the imperfections of the human mind is its tendency to emphasize certain facts which can not be contradicted, and from those facts to draw false conclusions. It seems to me that this is manifestly true of many of the facts which are relied upon by those who take the opposite view. For instance, the statement that while rates have remained stationary, taxes, materials, and all other expenses have increased is substantially true, and considered alone would indicate that rates must be increased if these increased expenditures are to be properly met and capital to receive its just return, but when considered in connection with other facts, easily susceptible of proof, such as that along with the increase in expenses have come proper and needful economies, such as the better loading of cars, and that the volume of business has increased, and that the character of equipment has so changed as to enable the railroads to handle a larger volume of business, and it is shown that the increase in expenses has been met by the increase in business and revenue, then the fact that expenses have increased loses much of its significance.

Are we not then justified in claiming that the lack of prosperity in past years should not be attributed to excessive regulation nor to the inadequacy of rates, considered as a whole, but chiefly to lack of business, because the recent results prove that with the same facilities reasonable profits have been made during the past fiscal year, and this, it will be noted, only because of increase in the traffic and in spite of the alleged excessive regulation and adverse legislation which is complained of.

The editor of the financial column of the New York Times, who, I take it, is not unfriendly to railway interests, evidently thinks so, for in the issue of October 9, among other optimistic views as to the present business prosperity and its continuance to be reasonably expected at the end of the war, he says this:

"It is a habit to put all the railroads in a group, and of late it has been a habit to talk of all railroads as though they were subject to the great difficulties under which some roads, even many, are laboring. That is a false market point of view. There are railroads in a very strong position—railroads which year after year have paid good dividends, and which to-day are earning those dividends twice over and in some cases more. Why should there not be confidence in the ability of such properties to withstand the effects of regulation, and to continue to give good returns to their stockholders? Moreover, why is it not reasonable to recognize the fact that a road once poor is not necessarily poor forever? Big earnings month after month, with no sign of diminution, are surely a cure for months of the other sort. They are, moreover, the best sort of offset for such added burdens as that imposed by the eight-hour law."

The relatively large net earnings for the fiscal year ending June 30, 1916, have continued with increasing volume during the succeeding months, and this inspires the Financial Age in its issue of October 7, which is also most friendly to railroad interests, to say this:

"That the railroad list should have occupied so much of Wall Street's attention during the past week is not surprising in view of the remarkable statements of railroad earnings that are daily coming to hand. Recently published returns of several of the companies' largest systems are not only impressive in their aggregate but all the more so on account of the substantial increases over corresponding periods of last year when traffic on all the leading systems was beginning to show material improvement over previous years. A notable instance of this was furnished by the publication during the week of the Union Pacific's report for the fiscal year ending June 30 last, which shows the largest gross earnings in the company's history, with surplus income after deducting all charges, including the preferred-stock dividend, equivalent to 15.65 per cent on the common stock, which compares with slightly less than 11 per cent in the preceding year. Another remarkable showing was that of the Louisville & Nashville, whose income balance for the last fiscal year was equivalent to about 19.4 per cent of the company's capital stock, as against 6.75 per cent in 1915. Such instances might be multiplied indefinitely, but all of them are eloquent of the fact that the wonderful activity and prosperity in mercantile and industrial lines that have developed since war began have spread freely to the railroad world."

The following table is compiled from an editorial in the Financial Age of October 21, 1916, entitled "Evidences of Railroad Prosperity":

*Comparison of income available for dividends earned by the railroads named in the fiscal years of 1915 and 1916.*

	1915	1916
	<i>Per cent.</i>	<i>Per cent.</i>
Union Pacific.....	11	15.65
Southern Pacific.....	7.2	11
Atchafalaya.....	6.2	12.3
St. Paul.....	3.28	7.33
Northern Pacific.....	7.58	10.47
Chicago, St. Paul, Minneapolis & Omaha.....	7.71	11.97
Northwestern.....	7.50	11.4
"Boo Line".....	7.87	16.32
Wisconsin Central.....	Deficit.	9.18
Alabama Great Southern.....	5.4	13.6
Illinois Central.....	6.27	10.8
Louisville & Nashville.....	6.8	19.4
Southern.....	.03	5
Lehigh Valley.....	10.4	15.3
Jersey Central.....	19.36	12.65
Pennsylvania.....	8.5	21.8
Baltimore & Ohio.....	5.5	11
Reading.....	10.6	7.3
Chesapeake & Ohio.....	4.25	11.5
Norfolk & Western.....	8.8	41.1
New York Central (fiscal year ending Dec. 31).....	8	16.7
		18

<sup>1</sup> Common.

<sup>2</sup> Preferred.

<sup>3</sup> About.

<sup>4</sup> Nearly (10.96).

<sup>5</sup> Probably.

While technically available for dividends, many of the railways are wisely expending their increased earnings for deferred maintenance and needed betterments.

Has not the time come, then, for those speaking for the railroad interests of the country to cease singing their jeremiaids? Has not the time come for optimism instead of pessimism? I do not underrate the fact that there have been many lean years for many railroads in the past 10 years, but perhaps the chief reason for the leanness was lack of business and not excessive regulation nor unremunerative rates. Certainly it could not be insisted that the rates of the more prosperous railroads of the country should be increased, in view of the earnings during the past fiscal year and at this time, and it is obvious that it would be no boon to the unprosperous roads merely to increase their rates. This for the reason, well known to all railroad men, namely, that the unprosperous roads are competing for business with the prosperous roads, and to increase their rates will simply be to prevent that competition and destroy the unprosperous roads. If, then, there ever can be a time when optimism should prevail in railway circles and when their managers should cheerfully and not so sorrowfully cooperate with the Interstate Commerce Commission and with the State commissions, that time is at hand.

According to an Associated Press dispatch, Mr. Frank A. Vanderlip, president of the National City Bank, in an address to the Society of Railway Financial Officers in Washington on October 20, expressed the opinion that exclusive Federal control will not solve railway difficulties, and he adds: "The selfishness of the public—stockholders, wage earners, and politicians—is the chief trouble with the railroads." May we not add to this list those who, without ceasing day or night, like the sad prophet of Israel, continue to cry, "Behold and see if there be any sorrow like unto my sorrow," while we know that they have no monopoly of this, the common heritage of the race, which, as we have learned both from the highest authority and from experience, "is born unto trouble as the sparks fly upward."

It is undoubtedly true that the greatest immediate need of the railroads, and therefore a need of the country, is that they may secure new capital for the purpose of adding to their facilities by increasing the number of their tracks, improving their condition, and adding to their rolling stock, which are not sufficient for the business now being offered. To secure these betterments it is necessary that they secure new capital. Are they to secure it by continuing to advertise their own poverty through public speeches made by their officials and attorneys and through the newspapers, which give publicity to their sentiments, exaggerated in every possible way? The wonder is, considering all their own efforts to show their desperate condition, that any of them have escaped bankruptcy. Would it not be wise for some of them to assimilate some of the homely but cheerful philosophy of "Mrs. Wiggs," she of the "Cabbage Patch," and not be quite so sorry for themselves?

I do not believe that any other business in the country could have continued to exist for so many years under such a campaign of depreciation. I do not mean to say that the recent increase in earnings (which the *Railway Age Gazette* states, whether "taken by themselves or in comparison with the figures for the preceding year, alone seem to indicate an amazing degree of prosperity") alone constitute the panacea for all of the ills of the present railway situation. I do say, however, that amazing prosperity will tend to reestablish their credit, that their present earnings enable them to keep up their property to a higher degree of efficiency, that reasonable dividends to their stockholders are thereby assured, and that all of these things combined, if continued, will build up their credit and enable them to secure the new capital which they need. That is, amazing prosperity will ultimately reestablish their credit unless they continue to destroy it themselves.

I do not wish anything which I have said to be construed as indicating that I am unmindful of the fact that the managers of the railway companies of this country have carried and still carry great burdens. A very large number of great and strong men are in the railway service, and are devoting their lives to the solution of the many and grave problems which are unsolved. They have performed a great public service, which the country should recognize, but, like the other sons of Adam, they are liable to err in judgment and in action, and some of them have so erred.

On the other hand, I will not deny, but will freely agree, that some railroad commissioners have, as it seems to me, sometimes misconceived their duty to

the public. Some oppressive rules and regulations have been insisted upon; some unnecessary burdens have been imposed; some simple requests of the railway managers for aid and cooperation have been refused, and railway commissioners of this class have retarded the progress of the country, and, in my opinion, have failed to perform a part of the great public service for which they were chosen. As, however, there are many great and wise men in the railway business, so also there are many patriotic and sensible men upon the public-service commissions of the country. I believe that without flattery a very large majority may be thus characterized. The best results can only be obtained by the fullest and frankest cooperation between the public-service commissioners and the railway managers. While they approach the questions involved from different angles many of the objects sought by each are the same, and, notwithstanding all of the inherent defects of human nature, we believe there is no reason for depression or despair, and while the country is enjoying an unexampled period of prosperity why may not the railroad companies cease their songs of woe and join in the chorus?

The slogan or shibboleth of those antagonistic to State regulation is that they have forty-nine masters; that is, that forty-eight States and the Federal Government are all regulating them at the same time. Let us examine these catch words for a moment. Possibly in the heat of argument exaggeration may be excused, but what railroad in this country runs through forty-eight States? May we not at once say then without hesitation that no railroad in this country has forty-nine masters? Their masters in this sense of the word are the Federal Government as to matters referring directly to interstate commerce, and as to local matters and intrastate commerce those States only in which they are located and doing business. Then, again, have they any more masters than every other citizen of this country? When I travel from Virginia to California I am subject to the laws of the Federal Government all the time, and from time to time subject to the laws of the State in which I happen to be traveling. Some of the large private corporations do business in as many States, or more, as any large railroad system. Have the railroads any more masters than such corporations, which are subject to the Federal law, and at the same time are subject to the laws of the various States in which they do business and by which they are protected? They have one master—the law—and the sovereignty of the law is, and should be, master of us all.

Tested in this way it may be said to be simply an attack upon and criticism of our form of government.

That is to say that the framers of the Federal Constitution were not wise when they adopted the form of government which provides for the dual State and Federal sovereignty; that the encomiums bestowed upon this Federal system of ours by students of political history are all based upon erroneous conceptions of its value; that the imitations of it by other nations in their struggles for political freedom have been undertaken without due consideration and are unwise; that the magnificent progress which we have made during the 129 years of its existence owes nothing to our governmental system—indeed, that all the lessons of the remote and recent past are to be forgotten in our thoughtless and headlong rush in the name of progress toward centralized power and bureaucratic government.

Possibly this process of centralization of authority in the Federal Government at Washington is to go on with accelerated pace in the future, but if so let us fully realize what we are doing. Let us not close our eyes to the fact that if those who believe in thus changing the form of our Government succeed in their efforts, then that change will be radical and far reaching, and let us quit boasting of the wisdom of our fathers in providing that form of government which they evidently intended when they adopted the United States Constitution.

If the mature judgment of the Nation is that we have made a serious mistake in the form of our Government, let us meet the situation frankly and without subterfuge, let us amend the Constitution and abolish State control over local affairs, and cease our labored and dubious reasoning in our efforts by construction to enlarge the plain provisions of the Federal Constitution.

I commend to the Congress and to the railway executive committee these weighty and carefully considered words of that master of logic and diction, the Hon. Elihu Root, taken from his recent annual address as president of the American Bar Association.

After referring to the necessity of developing our vast new body of administrative law and calling attention to the fact that it is still in its infancy and still crude and imperfect, he says:

"The development of our law under the conditions which I have pointed out will be accompanied by many possibilities of injurious nature. There will be danger that progress will be diverted in one direction and another from lines really responsive to the needs of the people, really growing out of their institutions, and will be attempted along the lines of theory devised by fertile and ingenious minds for speedy reforms. Ardent spirits, awakened by circumstances to the recognition of abuses, under the influence of praiseworthy feeling, often desire to impose upon the community their own more advanced and perfect views for the conduct of life. The rapidity of change which characterizes our time is provocative of such proposals. The tremendous power of legislation, which is exercised so freely and with little consideration in our legislative bodies, lends itself readily to the accomplishment of such purposes. Sometimes such plans are of the highest value. More frequently they are worthless and lead to wasted effort and abandonment. The test of their value is not to be found in the perfection of reason. Man is not a logical animal, and that is especially true of the people of the United States and the people of Great Britain, from whom our methods of thought and procedure were derived. The natural course for the development of our law and institutions does not follow the line of pure reason or the demands of scientific method. It is determined by the impulse, the immediate needs, the sympathies and passions, the idealism and selfishness, of all the vast multitudes who are really from day to day building up their own law."

Pursuing the same line of thought, he says:

"There will always be danger of developing our law along lines which will break down the carefully adjusted distribution of powers between the National and State Governments. Upon the preservation of that balance, not necessarily in detail but in substance, depends, upon one hand, upon the maintenance of our national power, and, on the other hand, the preservation of that local self-government which in so vast a country is essential to real liberty."

Then, growing impassioned, he concludes his thought upon this general subject with this dire prophecy:

"And if the process goes on our local governments will grow weaker and the central governments stronger in control of local affairs until local government is dominated from Washington by the votes of distant majorities indifferent to local customs and needs. When that time comes the freedom of adjustment which preserves both national and local liberty in our system will be destroyed and the breaking up of the Union will inevitably follow."

When this association was organized under the guiding hand and inspiration of Judge Cooley, the first chairman of the Interstate Commerce Commission, as its president, and at its first meeting in this city on the 5th day of March, 1889, he emphasized the need for cooperation and concert of action between the Interstate Commerce Commission and the State railroad commissions, and this doctrine has been continuously emphasized by all of our leaders from that day to this. The most serious complaint now made of the present system is the lack of uniformity growing out of the differing legislation of the Congress and the States as well as the differing legislation of various States, and yet the proposition is that in order to secure uniformity the very agency through which such uniformity as does exist has, in great measure, been secured must be destroyed.

Every important question involving the regulation of the railways, almost without exception, has been first proposed, argued, and debated upon the floor of this association. Following these debates has come practically every amendment of the act to regulate commerce, and in almost every instance a number of the States of the Union adopted similar legislation before it had been adopted by the Congress.

This association has not simply advocated and favored uniformity as a sentiment. It has done much of importance to promote uniformity. To enumerate: The accounting methods of the railways and of making the annual operating reports has been greatly improved, and is practically uniform throughout the country, so that they now know more about their own business than they ever knew before; the safety-appliance laws have been enacted. Such slow progress as has been made in classification owe much to the insistence and persistence of this association; the demurrage rules, which are now practically uniform throughout the country, were framed by a committee of this association under

the chairmanship of the Hon. Franklin K. Lane, then a member of the Interstate Commerce Commission; this is true also of the express rates, not long since in a state of confusion, which are also now practically uniform throughout the country. At this very session of this association much progress will be reported in bringing about uniformity in the elimination of dangerous crossings and the precautions to be taken at crossings. The list might be prolonged to cover almost every phase of public regulation, and I can not conceive of any better method under our dual form of government for the creation of nation-wide sentiment for the promotion of uniformity of legislation and practice than the maintenance of the State commissions, with unimpaired powers, and of this association with all of its activities.

The charge of lack of uniform laws in this great country may doubtless be sustained by reference to a number of laws passed by the various States, but notwithstanding these laws we may safely venture to say that uniformity has been greatly promoted since the Federal and State Governments began to exercise their powers as well as by such exercise, and that it exists to-day in a far greater degree than formerly, when each railway company was free to compete with every other and to make its own rules and regulations. While there may be some glaring exceptions, it is unquestionably true that the great work of this association from its beginning to this day has been in the promotion and securing of uniform laws, Federal and State, and uniform regulation, and there has never been a year since its organization that substantial progress has not been made. If the State commissions are shorn of their powers, the cause of regulation will be hindered and not promoted. I know that the sentiment of this association is unequivocally and unalterably opposed to all unjust and unlawful discriminations in favor of either State or interstate traffic. I suggest that the time has come for us to affirm that sentiment in some concrete form. I therefore recommend that this association pass a resolution to the following effect:

**"Resolved,** That we favor the establishment and maintenance of reasonable and remunerative rates for railway companies by State and Federal authority, and that we oppose the making of either State or interstate rates with a view of creating discrimination in favor of or against any class of traffic or any community, and that we pledge ourselves to cooperate with each other for the purpose of preventing the establishment of any such discriminative rates, and of removing such unlawful discriminations, if any there be, as may now exist."

What, then, do we propose? We propose that we shall continue the policy of the past which has produced results which, while not perfectly satisfactory, has certainly accomplished many reforms, and justifies the continuance of the combined efforts of the Federal and State Governments to correct the errors of the past and remove the abuses of the present.

We propose by amendments of the act to regulate commerce, as its defects are disclosed, to remedy those defects, and to reach out after improvements for the future. Public regulation has not broken down, and the State commissioners will in the future, as in the past, unite their efforts with those of the members of the Interstate Commerce Commission through this organization, and otherwise, so to amend the act to regulate commerce as to enable the latter commission the better to perform the service which the country desires it to perform. This association will doubtless approve the effort to increase the number of Interstate Commerce Commissioners as well as any other legislation which the commission desires for the strengthening of its control over interstate commerce.

All growth which is enduring is slow. Nature never hastens. Michael Angelo visualized his magnificent conception of the creation of the walls of the Sistine Chapel in the Vatican at Rome by picturing the powerful hand of God rolling the sun and the moon from off the tips of His fingers, and the soul is stirred by that vision of power; but, instructed by the geologists, we have learned that the Creator did not build the universe in that way. We are told that he took His time through the eons and immeasurable periods of the past to build the physical world out of crude material which in the ages before that he had already created, and so he continues from age to age to educate and improve humanity for that "far off divine event to which the whole creation moves."

Let us, then, take a lesson and proceed to better things confidently but without impatience. Progress in public recognition has been slow, painfully slow, but it has progressed, and it has not failed.

Let us by all means correct our mistakes and continue to improve our legislation, National and State.

For, as old Dr. Jowett would say: "None of us is infallible, not even the youngest of us."

In all and above all let each one of us—and this is meant to include commissioners, legislators, State and Federal, as well as railway managers—cooperate for the better things which must of necessity come as the result of such cooperation. It is the right spirit, the spirit of fairness which we should above all desire, the respecting of the opposite and antagonistic point of view, the proving of all things and the holding fast to that which is good; the discarding of the worthless and the adopting of the best as we are given wisdom to perceive what is best which I am urging. To those who think that this is too sublimated, ideal, general, and vague to be helpful I would say that we stand ready to welcome the practical man who can devise the efficient remedy, and we stand ready to adopt it when he satisfies our reason and judgment of its wisdom. For our guidance and support let us always bear in mind those inspiring words of Daniel Webster:

"Justice is the greatest interest of man on earth. It is the ligature which holds civilized beings and civilized nations together. Wherever its temple stands, and so long as it is honored, there is a foundation for social security, general happiness, and the improvement and progress of our race. And whoever labors upon this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher to the skies links himself in name, fame, and character with that which is and must be as durable as the frame of human society."

Mr. THELEN. Just a reference or two more to present financial conditions. I happened to secure the other day a copy of the Financial Age of December 2, 1916—coming right down to date—and I find there, on page 953, a reference to the most recent reports of a number of the leading railroads of the country. Without going into that in detail, I will just take one or two instances which seem to be typical. Take, for instance, the Atlantic Coast Line Railroad. The Financial Age says with reference to this railroad:

Annual report shows that in the last fiscal year Atlantic Coast Line earned an equivalent of 11.31 per cent for its \$68,558,000 of common stock, compared with 6.23 per cent in 1915.

The CHAIRMAN. For what year was the 11 per cent?

Mr. THELEN. The 11 per cent was for the last fiscal year; that is, the year ending June 30, 1916. The reference to the Atlantic Coast Line Railroad ends with this sentence:

Dividends on the preferred and common stocks required \$3,437,735, leaving a surplus for the year of \$4,317,801, or \$3,454,600 more than 1915.

There is a statement with reference to the Norfolk & Western Railway Co., headed "September earnings." It says:

The company reports for September gross earnings \$5,122,182, an increase of \$332,554; maintenance of way and structure, \$686,403, increase \$10,425; maintenance of equipment, \$838,005, increase \$53,271; transportation, \$1,207,790, increase \$60,254; net after taxes, \$1,986,359, increase \$89,930. For the three months ended September gross earnings were \$15,310,316, increase \$1,323,852; maintenance of way and structure, \$2,100,461, increase \$140,390; maintenance of equipment, \$2,556,564, increase \$163,799; transportation, \$3,626,257, increase \$229,309; net after taxes, \$5,948,031.

There is a reference here to bonds which have just been sold by the Seaboard Air Line Railway Co., and, by the way, the New York papers all contain advertisements of this particular bond issue:

The company has sold to the National City Bank and Guaranty Trust Co. of New York \$12,800,000 first and consolidated mortgage 6 per cent bonds. These bonds, part of an authorization of \$300,000,000, are a direct obligation

of the company and are secured by a first mortgage upon 416 miles of road and collaterally on 3,046 miles of road. Proceeds of the sale will be applied chiefly against expenditures for improvements to properties.

I find by reference to an advertisement which appears in the New York Herald of December 4, 1916, that those bonds are being offered at 99½ and interest—a very good price—so that it would appear that this particular railroad is able to find additional money which it needs for extensions and betterments.

Senator BRANDEGEE. Six per cent, you say?

Mr. THELEN. Yes; 6 per cent bonds. With reference to the Southern Pacific Co., the Financial Age says:

Gross earnings in October amounted to \$15,692,153, a gain of \$1,558,790.

The report goes on and presents an interesting comparison of the increased freight earnings as against decreased passenger earnings of the Southern Pacific Co. The financial statement shows that these increased earnings were due to \$1,845,927 increase in freight revenues, which was offset by a decrease in passenger business of \$286,466. Of course the reason for that was we had the fair last year, with immense passenger business, and the business for this year has not been so good. The statement says that the operating income of the Southern Pacific was \$22,375,310, or a gain of \$3,165,290. There are references here to other railroads all telling the same story, but I think these which I have read are typical and sufficient to make my point.

I now present these few words with reference to this financial situation. We shall have considerable more to say on this subject when the claims of the railroads are fully presented. At the present time the point that we desire to make is that, although it is true that certain railroads are in financial difficulties, although it is true also that certain railroads have been very much impaired as to their credit, this is not a generalization which can be made of all railroads of the country, and that many of them are still in a strong position, abundantly able to secure the additional funds they need on reasonable terms.

May I now invite you, gentlemen, to return with me to the second main branch of Judge Thom's argument? That argument, as you will remember, was that the cause of such impaired financial credit as exists is largely due to regulation, and principally to the regulation of the States. With that claim we take absolute issue, and before we are through we think we shall be able to convince you that Judge Thom has entirely misconceived the causes of impaired railroad credit. What the carriers have failed to do in that respect—that is, to draw your attention to the real causes of impairment of financial credit—we shall do, and before we are through, we shall show you in detail, by reference to page and volume of official records, the real causes of the impairment of financial credit of the railroads, and then, having before you the causes of the disease, you will be better able to apply the remedy.

On the third day of Judge Thom's argument, as we have already observed, he presented his nine remedies. During the course of these proceedings we hope to present to you our suggestions with reference to each of these remedies. Some of them, frankly, we think are good; others, frankly, we think are bad; and hereafter,

after we have been able to mature our views, we shall present just what our matured views are with reference to a number of these remedies.

The first and most important remedy is to take away from the States practically all their power to regulate and supervise railroads. I say practically all their power. Judge Thom himself stated that he would leave to the States two powers with reference to the regulation of railroads—first, the power to tax, and, secondly, power with reference to such police regulations as, in his words, are not “vital”; in other words, which are not of very great importance either to the States or to the Nation. That being his main proposition, he next urged as the means and instrumentality for accomplishing that purpose—that is, for taking all these powers away from the State—the Federal incorporation of the railroads.

There are, gentlemen, almost as many brands of Federal incorporation as there are men who have given thought to the question. I realize that there are some men of splendid ability and whose patriotism I certainly very highly respect who are very strongly in favor of certain kinds of Federal incorporation. But those kinds of Federal incorporation, gentlemen, are not the kinds that these gentlemen present; and when I here refer to Federal incorporation I have in mind, unless I otherwise indicate, the plan of Federal incorporation which has here been presented by the railroads.

The committee of the National Association of Railway Commissioners has thought that it might be of service to you by taking this subject of Federal incorporation and going down to the bottom of it, particularly from a legal point of view, and, having done that, then to make our comments on the precise plan which has here been presented by the carriers. It will be my function, as the first main part of my presentation, to take the subject of Federal incorporation of the railroads, to put it out on the table before you where you can all see it, take it from the corners in which it has been lurking, and let the light of day shine upon it so you can see exactly what is involved in the plan presented by the railroads. Then you can judge what ought to be done with that plan.

Before doing that, however, gentlemen, in order that there may be no misapprehension with reference to the position of the National Association of Railway Commissioners on that subject, I desire to refer for just a moment to a certain committee report, on which Judge Thom has placed great reliance. This was a report of the committee on capitalization and incorporate relations of the National Association of Railway Commissioners.

The national association has a certain number of committees. The chief function of these committees is to take some particular subject, which is assigned to the committee, and to render a report on that subject, which is presented to the next convention of the national association. The report is read. If there are any recommendations for action contained in that report, then the convention does one of two things; it either adopts the recommendations or, if it does not like them it does the courteous thing, in killing the report, by simply ordering that it be filed and printed. In this particular case this report was read to the convention. It contained a recommendation

for Federal incorporation of the railroads. Now, what did the convention do to the report? The chairman of the committee moved that the recommendations be adopted. Another commissioner moved, as a substitute, that the committee be thanked for its work and that the report be printed and filed.

In connection with that matter I desire to read just a paragraph or two from the proceedings of the convention, so you may place yourselves there in the atmosphere of the convention and see what happened to this report.

The PRESIDENT. Gentlemen, at the time when these special orders came up we had before us as the unfinished business the report of the committee on capitalization and intercorporate relations. A motion was made to adopt the recommendations contained in that report. There was, however, no second to that motion. If there is anyone who will second the motion, it will give Mr. Edgerton a chance to express his views, if any, as to what should be done with the report.

There was silence for awhile. I can tell you these facts, because I was the presiding officer and I can see the picture before me.

Mr. CLARKE of Nebraska. As a courtesy I second the motion.

Mr. FINN of Kentucky. I second the motion also.

The PRESIDENT. With two such seconds the motion is certainly well seconded.

There was also a motion by Commissioner Mills, of Minnesota, thanking the committee for the hard work which it has done and moving that the report be filed and printed. Is there a second to that motion?

Mr. GUIHER of Iowa. I second the motion.

The PRESIDENT. The motion of Commissioner Mills is before the convention for discussion, and the chair recognizes Mr. Edgerton.

Mr. EDGERTON of California. Mr. President, from the second of Commissioner Finn may I assume that I have at least one supporter, or is it only seconded to get it before the house?

Mr. FINN. As a very interested listener, that is all.

Thereupon Mr. Edgerton, of California, proceeds:

I am here prepared to defend the report, prepared to discuss it, or prepared to have it quietly embalmed, not to say buried in the proceedings of the convention.

I realize that the report somewhat boldly attacks many subjects which might be considered to be loaded. My experience with dynamite is that except the fellow who produces it and encases it in a receptacle nobody wants to finger it or approach it. From the aspect of the association so far with regard to this report, I feel that there is an atmosphere of dynamite about it. I want to assure you, however, that after it is quietly put to rest, and perhaps the fuse thus taken out of it, when you can get alone by yourselves, and nobody will see you reading it, you will find much matter of interest in it.

The question was put upon the motion of Commissioner Mills of Minnesota, that this report be simply filed and printed, and it was unanimously so ordered, with the exception of one vote.

Mr. Thom stated that this report had been put over for one year. He was not quite accurate in that, gentlemen. What was done to the report was it was killed—quietly but politely killed. This was the history of this report. I have referred to the matter because Judge Thom apparently placed considerable reliance on this report with reference to Federal incorporation.

The particular kind or brand of Federal incorporation which is here presented by the railroads is presented to you frankly as the agency and instrumentality for taking away from the States practically all their power over railroads. The two propositions are linked together, first, the proposition to take away these powers from the States, and, secondly, the proposition to have Federal incorporation

for the purpose of doing that very thing. It may be that some of the members of this committee might favor some type of Federal incorporation, with many qualifications and conditions attached to it. It may be that those same members of the committee are not in favor of taking away from the States practically all their powers to regulate railroads. I think, in general, you will find, gentlemen, that those who are in favor of taking away from the States all their powers will be in favor of Federal incorporation, and that those who are opposed to such course of procedure will be opposed to Federal incorporation.

Federal railroad incorporation, of course, means simply the incorporation by the Federal Government of a railroad. We may forget the other classes of incorporations for the present, because we are confining ourselves to the railroads.

I had hoped, gentlemen, that the representatives of the carriers would present to you some details of their plan so that we could see exactly how they intended to accomplish what they have in mind. For instance, their purpose could be accomplished either by general statute, under which articles of incorporation are issued, or it could be accomplished by issuing charters directly to each railroad. The carriers have not indicated which one of those two plans they intend to pursue.

There is a fundamental difference between those two plans. In the old days it was customary to incorporate corporations directly by grant from the sovereign, but there were such abuses in connection with that method of procedure, arising from the fact that special clauses were slipped in or left out of the charters, that the modern way of handling a situation of this kind, the way in which the national banking act handles it and the way the most of our States handle it to-day, is by passing a general statute which prescribes general powers for these corporations, and then provides for the filing of their articles of incorporation with some public authority. Unfortunately we are in the dark as to which specific method the carriers intend to pursue in this regard, as in most other regards.

Just a word here and there, either in the general statute or in the special charter, can absolutely change the aspect of the situation. So I think if this committee is inclined to go further into that particular proposition, you may find it desirable to ask the carriers to present their statute and put it out on the table where we can all look at it and see what is really in it, and when that is done we may desire to be heard further on this particular subject.

Just a word, gentlemen, on the general proposition of the power of the Federal Government to incorporate Federal corporations. I may refer to some matters which are rather elemental, some matters which are well known to every member of the committee, but if I do my only excuse is that I am trying to build this question up from the ground as far as the legal elements of the problem are concerned.

That the Federal Government has the unquestioned power to create such agencies and instrumentalities as are necessary to enable it to carry out its admitted powers is, I think, clear, and that one of those agencies and instrumentalities which the Federal Government has the power to create for these purposes is a corporation incorporated by the Federal Government is equally clear. I need to

refer in that respect only to the case of *McCullough v. Maryland*, the famous case, 4 Wheat., 316, in which the Supreme Court of the United States, speaking through Mr. Chief Justice Marshall, held that although the Federal Constitution did not specifically give the power to create a bank, nor did it specifically give the power to create a corporation, nevertheless the Federal Government, under its general powers, had a right to create a corporation which was a national bank. In that case, as you will remember, the State of Maryland tried to place a tax on the securities issued by a branch bank of the Bank of the United States, located in Baltimore, and the Supreme Court held that such tax was illegal, and that the Federal Government had the right to create this corporation, which should be free from taxation by the States.

I shall not read any part of this case because it is so well known that you are all no doubt familiar with it.

I cite it simply as a foundation work for the general proposition that the Federal Government does have the legal right to create corporations for the purposes which the Federal Government has the power to execute.

Now, referring specifically to Federal railroads, it is generally known that the Federal Government has from time to time chartered Federal railroads. I thought it might be helpful to the members of the committee if I simply referred to the four cases which have come under my observation and give a reference to the statutes, so that if you desire to follow the matter further you will easily be able to do so. The first Federal railroad incorporated by the Federal Government was the Union Pacific Railroad Co., which was incorporated by act of July 1, 1862, for the purpose of constructing a railroad from the one hundredth meridian east of Greenwich, west, to connect with the Central Pacific Railway Co., which was incorporated by California. That statute you will find in Twelfth United States Statutes at Large, page 489.

The second Federal railroad was the Northern Pacific Railroad Co., which was incorporated by the Federal Government by act of July 2, 1864, for the purpose of constructing a line of railroad from Lake Superior to Puget Sound, in the State of Washington, with a branch line down to Portland, Oreg. This statute you will find in Thirteenth United States Statutes at Large, at page 365.

The next Federal railroad was the Atlantic & Pacific Railroad Co., which was incorporated by the Federal Government by act of July 22, 1866, for the purpose of constructing a line of railroad from Springfield, Mo., to Albuquerque, N. Mex., thence on to the Colorado River, and thence on to the Pacific Ocean. In this same act the Southern Pacific Railroad Co., although it was not a Federal corporation, being a California corporation, was granted power to connect with the Atlantic & Pacific Railroad Co. at the California State line. This statute you will find in Fourteenth United States Statutes at Large, page 292.

The fourth Federal railroad which has come under my observation was the Texas & Pacific Railway Co., which was incorporated by the Federal Government by act of March 3, 1871, for the purpose of constructing a line of railroad from Marshall, Tex., to San Diego, Cal. This statute you will find in Sixteenth United States Statutes at Large, page 573.

It is possible that there may be other Federal railroads, but those are the ones to which my attention has been particularly directed. I shall not read any of those statutes. I shall not even abstract any of them. In general, they provide that certain specified individuals shall be created into a corporation, which shall have a certain name, and which shall have the right to construct a railroad between certain points. They provide for the initial meetings of the boards of directors of these concerns. They provide generally for grants of land from the Federal Government. They retain certain powers to the Federal Government, and most of them retain the power to alter, change, or amend the statutes, although in the Texas Pacific case that power was not retained, which shows the need for very great care in drawing these particular statutes, in that some matter may be left out by just a slip of the pen.

Now, having laid the general foundation, it is my purpose, gentlemen, to take up the important powers which the States have over railroads, and to show you just what effect Federal incorporation will or may have on those powers, so that you may have the entire situation before you. The first power is the power over rates. I assume that it is the conceded law that at present the States have the power to regulate what are known as intrastate rates, subject, of course, to the decision of the Supreme Court of the United States in the Shreveport case in cases of discrimination.

Assuming, then, that the States have some power to fix State rates, we are next confronted with the question as to what will be the effect of Federal incorporation on those particular powers. This question has come before the Supreme Court of the United States a number of times. The decisions, I believe, are not very well known; at least, I have almost never seen them referred to, and I find, even among lawyers of standing at the bar, considerable lack of knowledge with reference to those particular decisions and as to what can be accomplished under those decisions. So I hope I may be pardoned if I refer a little more in detail to certain of these decisions.

The first case in which that question came before the Supreme Court of the United States was the famous case of *Reagan against the Mercantile Trust Co.*, which will be found in One hundred and fifty-fourth United States Statutes, at page 413. In that case the question at issue was whether or not the Texas Railroad Commission could regulate the rates of the Texas & Pacific Railway Co. It was claimed by the Texas & Pacific Railway Co. that under its charter from the Federal Government the State of Texas had no power over the rates of this corporation, even as to purely intrastate traffic. That raised a very interesting question, upon which the Supreme Court passed. I have before me, gentlemen, a copy of the original briefs which were filed in that case with the Supreme Court, and I want to refer to a few paragraphs in those briefs, as showing to you the exact question which was before the Supreme Court, because if we realize the exact questions which were presented to the Supreme Court by the attorneys for the railroads I think we may be in a position to understand a little better the language which was used by the Supreme Court in its decision.

I have before me, first, the brief which was filed by the Mercantile Trust Co., the trustee under the Texas & Pacific Railway Co.'s bond

mortgage. The first point urged by the Mercantile Trust Co. was that the Texas & Pacific Railway Co. is a Federal corporation, chartered and existing under an act of Congress, and that Congress alone has the right to regulate the exercise of its corporate franchises or to fix its rates and charges.

It was claimed that Congress alone has the right to regulate not merely the interstate rates but also the intrastate rates of this particular corporation.

Section 13 of the statute under which the Texas & Pacific Railway Co. was incorporated provided, in part, as follows:

*Provided further*, That the rates charged for carrying passengers and freight per mile shall not exceed the prices which may be fixed by Congress for carrying passengers and freight on the Union Pacific and Central Pacific Railroads.

Based on that paragraph the railroad attorneys made an argument that Congress had clearly indicated that as far as rates were concerned, both state and interstate, the matter should be left to regulation by the Federal Government. On page 24 of this brief the Mercantile Trust Co. says:

The effect, therefore, of the incorporation of the Texas & Pacific by Congress, under the various provisions in its charter, is necessarily to make the Texas & Pacific a corporation of the General Government, which is its sovereign, and to withdraw the control of the Texas & Pacific and its franchises from the States and Territories through which the roads may run, except in so far as police and taxation laws of such States and Territories may lawfully be made to apply to it.

I may say that, later on, I shall consider both police matters and taxation matters and the effect Federal incorporation may have on the powers of the States as to both those matters.

On page 28 the brief continues:

The franchises of the Texas & Pacific, including its most vital franchise, of fixing of rates and fares subject to the reserved right of the congressional control, are Federal franchises, conferred for Federal purposes, and therefore necessarily subject only to Federal regulation and control. The necessary result is that the Texas Railroad Commission can not be invested by the State with any authority, without the consent of Congress, which has never been given to fix or establish any rates of fare or charges which shall have any operation or effect on the Texas & Pacific Co.

I am reading these sections of the brief, gentlemen, so you may see clearly just what contentions were presented to the Supreme Court. I have here also a brief which was filed in the same proceeding by the Texas & Pacific Railway Co., signed by Winslow S. Pierce, R. S. Lovett, now president of the Union Pacific, and T. J. Freeman. In this brief, counsel make the same points as were made by the Mercantile Trust Co., but in addition thereto make a very important additional point. Counsel, in this brief, draw attention to the fact that the Texas & Pacific Railway Co. could be incorporated, not merely under the power of the Federal Government over interstate commerce, but also could have been incorporated under the military power and under the power over post offices and post roads, and contend that although there is a qualification in the power of the Federal Government over commerce, namely, the qualification that the control of the Federal Government shall be limited to commerce among the States that there is no qualification with reference to the power of the Federal Government under the military power or with reference to the power over post roads. So these attorneys contend that

even though if the commerce clause alone were under consideration the State of Texas might have retained its control over Texas rates; that if you look to these two powers, both of which are referred to in the statute, that the State of Texas has entirely lost out, and that the Federal Government alone has the power to control rates both interstate and intrastate in the State of Texas.

I shall read one paragraph which, I think, clearly shows that point of view. I now read from page 56 of the record:

Thus, legislating for national purposes, Congress may confer upon these corporations the right to transact business at any place within its territorial jurisdiction and may subject these agencies to such public use as may be incident to their general nature or desirable in the interest of public good or welfare. In such legislation Congress knows no State line. Its law is supreme and enacted in the interest of the people of the Nation.

May I direct attention particularly to the next sentence?

The regulation of commerce among the States is but one of the constitutional powers under which Congress derives sanction for the creation of these railway corporations. In the exercise of the other powers in which such sanction is equally found, State lines are without significance. Its action is supreme, and its authority is conclusive.

I shall read one further paragraph, paragraph No. 5 of the summary as presented by the attorneys for the railroad in this case:

The military, postal, and other powers under which the Texas & Pacific Railway Co. was created are, with the exception of the commerce power, which is but one of the powers under any one of which the sanction for the creation of the company was complete, exercised without regard to or constraint by reason of State lines, and in the Federal power to preserve, protect, and regulate these agencies is not subject to the limitation of such lines.

It was here contended before the Supreme Court of the United States that although under the commerce power it was not within the authority of the Federal Government to take from the State of Texas the power to regulate Texas rates, that nevertheless, under two other powers of the Federal Government, namely, first, the military power, and, second, the post-roads power, that it was possible to do this sort of thing. Now, bearing that contention in mind. I would like to read you a paragraph or two from the decision of the Supreme Court. This decision is found in 154 United States at page 413, and I now read from page 414. Justice Brewer delivered the decision.

The Texas & Pacific Railway is a corporation organized under the laws of the United States, and by reason of that fact it is earnestly insisted by counsel for it and the trust company that it is not subject to the control of the State, even as to rates for transportation wholly within the State. The argument is that it receives those franchises from Congress; and among those franchises is the right to charge and collect tolls, and that the State has not the power, therefore, in any manner to limit or qualify such franchise. This is an important question and deserves consideration, even though in respect to other matters these facts should present a case exactly parallel to that just recited and calling for a like decision, because if the State has no control in the matter the decree should not be affirmed in part, but in toto.

Then, at page 416, we come to the meat of the decision:

Similarly, we think it may be said that, conceding to Congress the power to remove the corporation in all its operations from the control of the State, there is in the act creating this company nothing which indicates an intent on the part of Congress to so remove it, and there is nothing in the enforcement by the State of reasonable rates for transportation wholly within the State

which will disable the corporation from discharging all the duties and exercising all the powers conferred by Congress. By the act of incorporation, Congress authorized the company to build its road through the State of Texas. It knew that, when constructed, a part of its business would be the carrying of persons and property from points within the State to other points also within the State, and that in so doing it would be engaged in a business, control of which is nowhere, by the Federal Constitution, given to Congress.

And so on.

I think I would better read the entire paragraph.

It must have been known that, in the nature of things, the control of that business would be exercised by the State, and if it deemed that the interests of the Nation and the discharge of duties required on behalf of the Nation from this corporation demanded exemption in all things from State control, it would unquestionably have expressed such intention in language whose meaning would be clear. Its silence in this respect is satisfactory assurance that, in so far as this corporation should engage in business wholly within the State it intended that it should be subjected to the ordinary control exercised by the State over such business. Without, therefore, relying at all upon any acceptance by the railroad corporation of the act of the legislature of the State, passed in 1873 in respect to it, we are of opinion that the Texas & Pacific Railway Co. is, as to business done wholly within the State, subject to the control of the State in all matters of taxation, rates, and other police regulations.

Gentlemen, I want to draw your attention to the fact that Justice Brewer conceded that if Congress had in this act incorporating the Texas & Pacific Railway Co., clearly shown the intention that the State of Texas should have been deprived of its power to fix rates, then that effect would be accomplished.

Mr. ADAMSON. Do you understand the use of the word "conceding" there means he thinks it is conceded, or that he uses that word to simply pass the matter to take up other objects?

Mr. THELEN. From the further language in the decision, Judge, referring to the intention of Congress—that if Congress had had this intention—

Mr. ADAMSON. But it is all based on the connection in which he used the word.

Mr. THELEN. I base my interpretation on the entire paragraph.

Mr. ADAMSON. I am talking about what he did. He used it there one time. Does he not mean "for the sake of this argument?"

Mr. THELEN. I should say there would be much force in your suggestion, if it were not for what later appears. He says that the silence of Congress must be deemed an intention not to deprive the States of that right. I think it must be clear that if Congress had expressed itself so in this paragraph, then the State of Texas would have been deprived—

Mr. ADAMSON. The trouble with your view is it is all based on the construction you put on his use of the word "conceding."

Mr. THELEN. I make this argument, gentlemen, largely in view of the claims made in the briefs, in which it was clearly pointed out that although there is doubt about this coming within the commerce clause of the Constitution, that notwithstanding, under the military power and the post-office power, Congress could have effected this by putting the necessary language in the statute.

Personally I think there can be little doubt as to what Justice Brewer had in mind in this case, and my belief in that respect is strengthened by two other decisions of the Supreme Court of the

United States in which reference is made to this decision, and in which this decision is given the effect which I suggested to you gentlemen.

Senator UNDERWOOD. Will you call the committee's attention to those decisions at this time?

Mr. THELEN. I shall refer to each of them in just a moment, Senator, if it is not boring the committee.

Mr. HAMILTON. These references are useful to the committee.

Mr. THELEN. That is the exact spirit in which I make them. I hope, putting them all together, they will be of some help to you. I will say frankly I am going into this matter for this purpose. There may be some among you, or some Senators and Representatives in Congress, not on this committee, who may have the belief that even a Federal incorporation would not take these powers away from the States, on the ground that it is necessary first to amend the commerce clause of the Constitution. If there are any of those with that view, I think it should be drawn to their attention that it has been intimated three times by the Supreme Court of the United States that these things can be done without an amendment to the commerce clause of the Constitution.

I was surprised to find, in the famous case of *Smyth v. Ames*, that this particular point was dealt with. This case of *Smyth v. Ames* is found in 169 U. S., at page 466.

Senator BRANDEGEE. I should like, Mr. Chairman, before Mr. Thelen proceeds in analyzing these cases, to ask whether we are all at liberty to ask all the legal questions we want to ask now or keep still?

The CHAIRMAN. I think the decision of the committee was we should wait until the conclusion of the remarks.

Mr. ADAMSON. I think, Mr. Chairman, that is correct as to cross examining, but as to any matter reached which we do not understand, I think that rule does not obtain.

Senator ROBINSON. If we relax the rule at all, it will only result in confusion.

The CHAIRMAN. The chair will rule, unless the committee decides to the contrary, that the witness is not subject to interruption during his presentation of the case.

Mr. THELEN. After I have concluded, I shall be only too glad to answer any questions.

This case of *Smyth* against *Ames* was a case brought by the stockholders of the Union Pacific Railroad Co., a Federal corporation, and other railroads against the constituted authorities of the State of Nebraska, to enjoin them from putting into effect an act of the Legislature of Nebraska establishing certain freight rates.

In this case it was urged by the railroads, and by the stockholders of the railroads, that the statute of the State of Nebraska could have no application to the Union Pacific Railroad Co. because it was a Federal railroad corporation, and reference was made, in that respect, to this *Reagan* case, to which I have referred.

The court, speaking through Mr. Justice Harlan, gives very careful consideration to that point, and I quote from page 519 of the report.

An important question is presented that relates only to the Union Pacific Co. That company is a corporation formed by the consolidation of several companies under the authority of acts of Congress, one of the constituent companies being

the Union Pacific Railroad Co., incorporated by the act of July 1, 1862. \* \* \* Neither that company nor the Union Pacific Railroad Co. is named in the Nebraska statute, but the statute is interpreted by the State board of transportation as embracing the present defendant corporation. It is contended that the State is without power to fix or limit the rates that the Union Pacific Co. may charge for the transportation of freight on its lines between points within Nebraska. This contention rests: (1) Upon the provisions of the acts of Congress showing that the Union Pacific Railroad Co. was created for the accomplishment of national objects, namely, to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores of the United States; (2) upon the eighteenth section of the above act of July 1, 1862—being the Statute under which the Union Pacific Railroad Co. was incorporated, which section provided in part: "That whenever it appears that the net earnings of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures, including repairs and the furnishing, running, and managing of said road, shall exceed ten per centum upon its cost, exclusive of the five per centum to be paid to the United States, Congress may reduce the rates of fare thereon, if unreasonable in amount, and may fix and establish the same by law."

So, in this particular case, the railroad relied, first, on the general fact it was incorporated under an act of Congress, under all these three powers; secondly, on specific language in the statute of incorporation, by which language the railroad claimed that Congress had expressed its intention that the rates in the State of Nebraska should no longer be subject to control by the State.

Mr. Justice Harlan continues:

The argument is that Congress by this enactment has reserved to itself exclusive control of rates, interstate and local, to be charged on the Union Pacific Railroad. As this view, if maintained, would require an affirmance of the decree, so far as the Union Pacific Company is concerned, whether the Nebraska statute of 1893 would be constitutional or not as to the other railroad corporations, it can not properly be passed without examination.

Then the court referred to the Reagan case. I do not know whether I want to read all of that to you. They quote from the Reagan case, and it would be a work of supererogation, inasmuch as I have read that particular passage to you from that Reagan case, to repeat it. By the way, Judge Adamson, I shall read part of this paragraph, because it bears on this question you asked me.

In *Reagan v. Mercantile Trust Co.* (154 U. S., 413, 416) the question arose whether the Texas & Pacific Railway Co., a corporation organized under the laws of the United States, was subject to the laws of Texas with respect to rates for transportation wholly within that State. The ground upon which exemption from State control was there asserted by the company was that it received all its franchises from Congress, including the franchise to charge and collect tolls. This court, conceding, for the purposes of that case, that Congress had power to remove the corporation in all its operations from State control, held that the act creating it did not show an intention upon the part of Congress to exempt it from the duty to conform to such reasonable rates for local transportation as the State might prescribe, and that the enforcement by the State of reasonable rates for such transportation would not disable the corporation from performing the duties and exercising the powers imposed upon it by Congress.

Then there is a quotation from the Reagan case, and notwithstanding that fact the court here proceeds to consider this particular provision in the statute and tries to make up its mind as to whether, under this particular provision in the Union Pacific Railroad Co.'s statute, Congress expressed the intent which was referred to by Mr.

Justice Brewer. That will be found on page 521 of the report, in the middle of the page:

In the present case the question is more difficult of solution by reason of the declaration in the above act of July 1, 1862 (no similar declaration being made in the act incorporating the Texas & Pacific Railway Co.), that Congress may reduce the rates of fare on the Union Pacific Railroad if unreasonable in amount, and may fix and establish the same by law whenever the net earnings of the entire road and telegraph, ascertained upon a named basis, should exceed ten per centum upon its cost, exclusive of the five per centum to be paid to the United States.

Then Mr. Justice Harlan continues:

Undoubtedly Congress intended by that act to reserve such power as was necessary to prevent the corporation from exacting rates that were unreasonable. But this is not equivalent to a declaration that the States through which the railroad might be constructed should not regulate rates for transportation begun and completed within their respective limits.

In other words, he reaches the conclusion that the language of this particular statute is not strong enough and not explicit enough to support the claim of the railroads in that respect. He then goes on and refers to the fact that the making of rates for transportation between points wholly within the State is primarily under the control of the State, and continues:

And it ought not to be supposed that Congress intended that, so long as it forebore to establish rates on the Union Pacific Railroad, the corporation itself could fix such rates for transportation as it saw proper, independently of the right of the States through which the road was constructed to prescribe regulations for transportation beginning and ending within their respective limits. On the contrary, the better interpretation of the act of July 1, 1862, is that the question of rates for wholly local business was left under the control of the respective States through which the Union Pacific Railroad might pass with power reserved to Congress to intervene under certain circumstances and fix the rates that the corporation could reasonably charge and collect. Congress not having exerted this power, we do not think that the national character of the corporation constructing the Union Pacific Railroad stands in the way of a State prescribing rates for transporting property on that road wholly between points within its territory.

Then please notice, gentlemen, this next sentence:

Until Congress, in the exercise either of the power specifically reserved by the eighteenth section of the act of 1862 or its power under the general reservation made of authority to add to, alter, amend, or repeal that act, prescribes rates to be charged by the railroad company, it remains with the States through which the road passes to fix rates for transportation beginning and ending within their respective limits.

In other words, here is a clear intimation that under its general power reserved to alter, amend, or change the statute, Congress might have the power to establish and fix even the rates which should be charged by the Union Pacific in Nebraska on purely State traffic, in that respect, following out the intimation that was made by Mr. Justice Brewer in the Reagan case.

The third reference which I have found in the decisions of the Supreme Court on this general question, is found in the famous Minnesota Rate Case (230 U. S., at page 352). At page 425 I find this reference, in the decision made by Mr. Justice Hughes. This is the Northern Pacific, by the way, another Federal corporation, and here again we have the same question arising. I read now from page 425:

A further question was presented in *Reagan v. Mercantile Trust Co.* (154 U. S., 413), in respect to the same statute and order as applied to the Texas

& Pacific Railway Co. which had been organized under the laws of the United States (Mar. 3, 1871, 16 Stat., 573, c. 122) and operated its road not only within the State but also for several hundred miles outside. It was insisted that this company was "not subject to the control of the State, even as to rates for transportation wholly within the State," the argument being that it was not within the State power to limit the Federal franchise to collect tolls.

Mr. Justice Hughes continues:

But the court held that the act of Congress did not go to the extent asserted but left the company, as to its intrastate business, subject to State authority.

Now, here we have Mr. Justice Harlan, in *Smyth v. Ames*, and Mr. Justice Hughes, in the Minnesota rate case, apparently giving the same interpretation of what Mr. Justice Brewer said in the Reagan case, as I have suggested.

Now I ask your attention to the fact that in none of these cases was a decision on this specific question necessary to the decision of the case, and I think any lawyer who looks the cases squarely in the face must realize that fact; but, notwithstanding we have the clearest kind of intimation here three times—first, by Mr. Justice Brewer; second, by Mr. Justice Harlan; and third, by Mr. Justice Hughes—that if in the language incorporating a Federal railroad Congress clearly expressed the intention that the State should be deprived of its authority over rates, that effect will be accomplished not under the commerce clause but under the military power or under the power over post roads. I have presented this argument to you on the question of rates so that if you should want to go further into this question of Federal incorporation you may have before you clearly the danger which I see in that situation; that is, the danger of doing one thing and thinking one thing is being done when in fact another thing is being done. If I were in the service of the railroads—and, by the way, I used to be a railroad lawyer, and I hope from that that I can see both points of view—if I were in the service of a railroad, and if I were drawing this Federal incorporation act, I should insert a clause providing that this particular corporation shall be available to the Federal Government for the transportation of troops, munitions, supplies, and all that sort of thing, and I should insert another clause to the effect that this railroad shall be a post road, and I should insert another clause to the effect that this is done under the power to regulate commerce, and then, if the States wake up some day and see what is being done to them, I would go to the Supreme Court and argue on the basis of these cases and on the basis of the military power and the post-roads power. I do not know but what the Supreme Court would decide—and I am inclined to think it would on the basis of these three decisions—that the States had lost their power over rates.

The next power of the States that would be affected and which I desire to discuss is the matter of taxes. It is true that the railroads have graciously stated that the States may for the present retain their power over taxes. I want to say that we are very thankful to them for that, because taxes mean a great deal in the conduct of our various State governments, and we certainly appreciate their courtesy for the present in leaving this power to the States. You no doubt observe that with reference to the few powers which they offered to leave to the States—namely, the taxing power and such police powers

as are not vital—the representative of the carriers in each case states that for the present these powers were to be left to the States. We know, of course, what their ultimate plan is. We must suppose that they will be able and energetic in carrying through their plan and that some day, if the door is open, the States will find they have lost their taxing power as well as their power over police regulations, including those which are not vital.

Now, some lawyers of eminence have taken the position that there is nothing to be feared as far as the taxing power is concerned. They have taken the position that even through the instrumentality of Federal incorporation the States can not be deprived of their taxing power. If you will pardon me just a moment, I will get a case to which I would like to refer.

Mr. ADAMSON. At the risk of being obnoxious, and subject to the objection that I am interrupting you, I would suggest that one of these clerks will hand you any of those books that you desire.

Mr. THELEN. That is very kind of you, Mr. Adamson. I have a list here of the cases.

The first important case in which the question of taxation, as far as Federal railroad corporations are concerned, came before the Supreme Court is the case of *Thomson v. Pacific Railroad*, which you will find in Ninth Wallace, at page 579. In that case the question before the Supreme Court was whether or not the State of Kansas had the power to tax the property of the Union Pacific Railroad Co., again a Federal corporation. With reference to that point the Supreme Court said in effect that, although Congress might, if it has so expressed the intention, take the taxing power away from the States, no such intention had been clearly expressed in the act incorporating the Union Pacific.

At page 587 the court, speaking through the Chief Justice, said:

The main argument for the complainants, however, is that the road, being constructed under the direction and authorization of Congress for the uses and purposes of the United States, and being a part of a system of roads thus constructed, is therefore exempt from taxation under State authority. It is to be observed that this exemption is not claimed under any act of Congress.

In other words, there is no specific provision in the statute incorporating this railroad providing that this property was to be exempt from State taxation.

It is not asserted that any act declaring such exemption has ever received the sanction of the National Legislature. But it is earnestly insisted that the right of taxation arises from the relations of the road to the General Government. It is urged that the aids granted by Congress to the road were granted in the exercise of its constitutional powers to regulate commerce, to establish post offices and post roads, to raise and support armies, and to suppress insurrection and invasion; and that by the legislation which supplied aid, required security, imposed duties, and finally exacted, upon a certain contingency, a percentage of income, the road was adopted as an instrument of the Government, and as such was not subject to taxation by the State.

There we have the claim made by the Union Pacific in this particular case. At the bottom of page 588, passing upon that contention, the court said:

We do not doubt, however, that upon the principles settled by that judgment Congress may, in the exercise of powers incidental to the express powers mentioned by counsel—

### Referring to the case of *McCulloch v. Maryland*—

make or authorize contracts with individuals or corporations for services to the Government; may grant aids, by money or land, in preparation for and in the performance of such services; may make any stipulation and conditions in relation to such aids not contrary to the Constitution—

I would like to refer particularly to the next language:

and may exempt, in its discretion, the agencies employed in such services from any State taxation which will really prevent or impede the performance of them.

It was decided in this particular case that Congress had not clearly expressed an intention to remove the property of the Union Pacific Railroad from State taxation, and on that ground the court ruled against the contention of the carriers.

The other case to which I would like to refer in this connection is the case of *Railroad Co. v. Peniston*, which you will find in 85 United States, also 18 Wallace, at page 5.

In that case the State of Nebraska was the State which was trying to tax. The local authorities of Lincoln County, Nebr., had levied a certain tax on the physical property of the Union Pacific Railroad Co. in the State of Nebraska. We have here a very interesting situation when it comes to the decision. We find Justice Strong writing the decision of the majority, which was not a majority, being concurred in by only three justices. There you have four accounted for. Mr. Justice Swayne concurred in the conclusion, but not in the reasoning. Mr. Justice Bradley and Mr. Justice Field dissented, and Mr. Justice Hunt dissented.

Now, the majority, if we may refer to four as a majority, headed by Justice Strong, held that there is a clear distinction between taxing the physical property of a Federal railroad and taxing its franchise, or the right to exercise its functions. They decided the case on the ground solely that in this particular case the tax was levied on the physical property of the Union Pacific Railroad in the State of Nebraska. Those four justices held that the tax was not obnoxious to any constitutional provision. Mr. Justice Swayne said on page 37, concurring in the judgment—

I concur in the affirmance of the judgment in this case. I see no reason to doubt that it was the intention of Congress not to give the exemption claimed. The exercise of the power may be waived. But I hold that the road is a national instrumentality of such a character that Congress may interpose and protect it from State taxation whenever that body shall deem it proper to do so.

For some of the leading authorities in support of this principle Mr. Justice Swayne referred to the case of the *Chicago & North Western Railway v. Fuller*, decided by the court a short time before.

I shall not take the time of the committee by reading from the dissenting opinion of Justice Bradley and Justice Field, but shall simply draw attention to the fact that those two justices strongly urged that although there was no reservation of the taxing power in the statute creating the Union Pacific, that nevertheless from the mere fact that the Federal Government had created this agency, and in analogy to the *McCulloch v. Maryland* case, the State of Nebraska, and no other State, had the right to tax even the physical property of the Union Pacific Railroad.

Mr. Justice Hunt simply said, "I dissent from the opinion of the court." There you have the situation.

If there had been language in the Union Pacific statute clearly showing the intention of Congress to exempt this property from taxation there is no question on that record that the majority of the court would have concurred and would have held that the Federal Government had succeeded in exempting the entire property of the Union Pacific from State taxation.

I urge this matter so that you may have before you when it comes to the question of taxation what I believe is the undoubted law, that if the language put into the statute is sufficient for that purpose then under Federal incorporation the Federal Government clearly has the power to take away from the States the right to tax all railroad property of all Federal railroad corporations.

I come now, gentlemen, to the very interesting question of securities. By securities I mean generally the stocks and bonds, notes, and other evidences of indebtedness of railroad companies.

I predict, gentlemen, that you will find as your first large constructive piece of work to be done under this inquiry the provision for adequate regulation by the Federal Government of the issues of the securities of all the interstate railroads.

There is considerable difference of opinion among the members of the National Association of Railway Commissioners as to whether this action of the Federal Government shall be concurrent with State action or whether it should be exclusive. I have my own very strong views on that subject, but I think it is not necessary to go into them at the present time, because I am trying to address myself to the legal aspects of the question.

With reference to control by the Federal Government of the issuance of securities of all railroads engaged to any extent in interstate commerce, I wish to present to you as my first proposition that Congress has the full power, under amendment of the interstate commerce act, or by other legislation, without any Federal incorporation, of providing for a complete, adequate, and, if it wants to, exclusive regulation of the issuance of securities of all interstate railroads. I am happy to find that Judge Thom agrees with me on that proposition. In the hearings which were held before the Committee on Interstate and Foreign Commerce of the House of Representatives in 1914, from February 9, to March 17, 1914, Judge Adamson and the other members of the House committee who were there will remember that Judge Thom explicitly made the admission that it is possible for the Federal Government to enter upon complete and adequate regulation of the securities of all these carriers without Federal incorporation. As you will remember, he made the same statement the other day, so that we find Judge Thom in 1914 and Judge Thom in 1916 agreeing with my point of view.

I furthermore take the position that the Federal Government has the right to make such regulation exclusive, without Federal incorporation. I rest with reference to that point on the general principle of constitutional law, that whenever the Federal Government enters into the field of interstate commerce, if it expresses its intention that its regulation shall be exclusive, that will be the inevitable effect. It will be unnecessary, I think, for me to refer to the large number of cases which have established that proposition. I might

refer in passing, without quoting, to one or two typical cases, as follows:

*The Northern Pacific Railway Co. v. The State of Washington* (202 U. S., 370). That was a case involving a railroad hours-of-service statute of the State of Washington. After the Federal Government enacted its statute it was held that the State statute would have to yield, because the Federal regulation was exclusive, it having entered into that particular field.

*Southern Railroad Co. v. State Railroad Commission of Indiana* (236 U. S., 439), decided on February 23, 1915. In that case the State of Indiana passed a statute providing that the railroad companies should place secure grab irons and handholds on the sides and ends of every railroad car. The Federal Government passed the Federal safety-appliance act. A prosecution was instituted by the State of Indiana under the State statute. The railroad made the defense that the Federal Government had entered into this field, and that it having entered into the field, its power was exclusive and the State statute was superseded. The Supreme Court upheld that contention.

In the second employers' liability case the same conclusion was reached. Without referring to a large number of other cases establishing the same principle, I simply want to present the elemental proposition that if the Federal Government should undertake to regulate the issue of securities by these interstate carriers, particularly if in its statute it shows that it intends that its regulation should be exclusive, the regulation will be exclusive without the creation of a Federal corporation.

The argument which was presented here the other day as to why it was necessary to have Federal incorporation, bearing in mind the regulation of securities, was in a nutshell this: That if this purpose is accomplished through the instrumentality of Federal corporations, then all the lawyers would accept it and there would be no litigation; but that if Congress should undertake directly, by amendment of the interstate commerce act or otherwise, to regulate these securities, then there would be litigation.

It seems to me, gentlemen, that that is an argument which works the other way. It is certainly very easy, if the interstate commerce act is amended so as to provide for regulation of these securities, to take a test case to the Supreme Court of the United States, and it should not take very long to decide that question. On the other hand if you are going to undertake to create Federal corporations you are going to have a legal fight all along the line, greater than any legal fight in which the railroads of this country ever have been engaged. At the very outset we find Judge Thom differing from Richard Olney. The question at issue was what shall be done with the shares of stock of minority stockholders in the State corporations. Mr. Olney says, "condemn them by the exercise of the right of eminent domain." Mr. Thom says it is not necessary. Now, when you have here at the very outset this fundamental difference between two distinguished lawyers on the railroad side of it, how are we going to escape litigation if the Federal incorporation project is carried through?

Take the question of rates; take the question of service; take the question of safety; take even the question of securities. There is

bound to be litigation all along the line. There will be litigation on the construction of the various clauses and paragraphs of this Federal incorporation act. It seems to me that when it comes to the question of litigation the arguments are all in favor of the direct amendment of the interstate commerce act to provide for the control of these securities. So, frankly, I can not see the force of that argument. The Committee on Interstate and Foreign Commerce of the House could not see the force of the argument either, as the record will show that Judge Adamson and others went carefully into that very question and wanted to find out why it was necessary to have Federal incorporation when the same thing could be done directly, simply, without this agency or instrumentality, by a simple amendment of the interstate commerce act.

On the question of securities, I simply desire to make the point that without Federal incorporation the Federal Government has the power, by direct amendment of the interstate commerce act or by the passage of another statute, to provide not merely for adequate, but for exclusive control over the securities of these carriers, if Congress is so minded.

The next general heading to which I will address myself just a moment we may call "Service, equipment, and facilities." This head includes a large number of matters which, at the present time, are regulated by the States, and efficiently regulated—the quality and adequacy of the service; the adequacy of equipment, freight and passenger; the construction, heating, lighting, and sanitation of railroad stations and other buildings; the number and the stopping of trains; the supply of cars and the time for supplying them; the construction of spur tracks; and the construction of connections between various railroads. With reference to all these matters, and others, which we may group under the general head of "Service, equipment, and facilities," it follows if the Federal Government can take the power of controlling rates away from the States by Federal incorporation it can do the same thing in reference to service, equipment, or facilities.

I take it that no authorities are necessary on that point. It seems to be elemental.

Another group of powers now exercised by the States, of considerable importance to them, may be classed under the general head of "Safety." If I may illustrate by our own work in California along this line, we investigate all railroad accidents and take steps to prevent such accidents in the future. We establish for the smaller railroads, which do not always have trained and efficient men, operating rules, so that the operations of the railroads may be conducted with greater safety, and we have established such rules for all the smaller railroads of the State. We have made provision for eliminating danger from horizontal clearances and from vertical clearances, and we are carrying our general order in that regard into effect on various roads of the State. We have gone over block and various other signals and are now taking up that matter with some of the railroads.

I will say that in California we do not have any trouble with the railroads. When any question comes up we get around a table; we deal with each other in perfect frankness; they do not bear false witness against us, and we make no false charges against them, and we get along very well. So many of these matters which might lead

to litigation in case the railroads did not have a frank and public spirit are solved easily and readily in our State, as in many other States in the Union.

We have control over interlocking devices, and quite a number of these have been installed under our general regulations. We also have control over the condition of equipment and the manning of equipment.

Now comes the tremendously important question of grade crossings. It is provided in California that no railroad may run its track over a railroad or highway, and no railroad or highway may be constructed over a railroad track until the commission's consent has first been secured. We also have control over the matter of the elimination of grade crossings. At the present time we are engaged in a State-wide investigation in every county of the State, conducted by our engineers, in company with the railroad engineers, examining all the railroad grade crossings. Where dangerous obstacles exist they will be removed. The most dangerous of the grade crossings will be eliminated and separation of grades will be instituted, the expense being borne partly by the railroads and partly by the public.

I could refer to a large number of other matters under this general head of "Safety." My point with reference to Federal incorporation is that if appropriate language is inserted in the general statute providing for Federal incorporation or in the special charters the States will be relieved from all this power with reference to safety.

I come next to a very interesting group of powers, which we may class under the general head of "Police powers." I find that among lawyers there is quite a prevalent view to the effect that whatever the Federal Government may do as to other matters under the commerce clause, it can not touch the local police regulations of the States. In view of that rather prevalent opinion, which I have been somewhat surprised to find among a number of well-informed lawyers, I have gone into the matter a little in detail.

One always gets into difficulties when he tries to define police power, and I am not going to try to do so. On the one hand is the broad police power, under which all public utilities can be regulated, and, on the other hand, are what are known as police regulations. In referring to police regulations I have in mind matters affecting the safety, health, and morals of the public. The opinion is quite prevalent that the Federal Government can not enact regulations which will affect matters of safety, health, and morals of the people of the various States. That matter has come before the Supreme Court, and the Supreme Court has decided against that contention. The leading case, I think, on that point is *Hoke and Economides v. United States*. That is the white-slave case, and will be found in 227 United States, 308. In that case, as you will find on page 221, this contention was made:

Plaintiffs in error admit that the States may control the immoralities of its citizens. Indeed, this is their chief insistence, and they especially condemn the act under review as a subterfuge and an attempt to interfere with the police power of the States to regulate the morals of their citizens, and assert that it is in consequence an invasion of the reserved powers of the States.

The court, speaking through Mr. Justice McKenna, says:

There is unquestionably a control in the States over the morals of their citizens, and, it may be admitted, it extends to making prostitution a crime.

It is a control, however, which can be exercised only within the jurisdiction of the States, but there is a domain which the States can not reach and over which Congress alone has power; and if such power be exerted to control what the States can not it is an argument for, not against, its legality. Its exertion does not encroach upon the jurisdiction of the States. We have cited examples; others may be adduced. The pure food and drugs act (June 30, 1906, 34 Stat., 768, ch. 3915) is a conspicuous instance. In all of the instances a clash of national legislation with the power of the States was urged, and in all rejected.

So the Supreme Court here clearly holds that if the Federal Government, acting under the commerce clause, enacts legislation which touches these police regulations, then the power of the Federal Government is exclusive and the States have lost control.

Mr. ADAMSON. Mr. Chairman, House Members of this committee will be compelled to be at the House at 12 o'clock. We have barely time now to reach the House for the opening.

The CHAIRMAN. How much longer will it take you to conclude your argument, Mr. Thelen?

Mr. THELEN. I am afraid it will take at least a day longer, Mr. Chairman.

Mr. ADAMSON. I move we do now adjourn.

(The motion was agreed to, and thereupon, at 11.50 o'clock a. m., the committee adjourned until to-morrow, Thursday, December 7, 1916, at 10 o'clock a. m.)

# INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT CONTROL AND REGULATION.

THURSDAY, DECEMBER 7, 1916.

UNITED STATES SENATE,  
JOINT SUBCOMMITTEE ON INTERSTATE COMMERCE,  
ROOM 326 SENATE OFFICE BUILDING,  
*Washington, D. C.*

The joint subcommittee met at 10 o'clock a. m., pursuant to adjournment, Senator Francis G. Newlands presiding; also Vice Chairman William C. Adamson.

The CHAIRMAN. The subcommittee will come to order. Mr. Bryan, will you proceed?

## STATEMENT OF HON. WILLIAM JENNINGS BRYAN.

Mr. BRYAN. Mr. Chairman and gentlemen of the committee, my reason for coming here is that the proposition which you have before you seems to me to be of so great importance, in fact, so revolutionary in character, that, as one interested in all things that affect the Government and people, I feel it my duty to present very briefly what might be called the other side from the side that has been presented, as I have read it in the papers.

The first question to be decided is whether we need more stringent railroad regulations, and according to the decision of that question will be the decision of the other questions involved. If we want less restriction, I know no better plan of securing it than the transfer of all regulation to Washington. The issue, as I understand it, is whether the Federal Government should take exclusive regulation of railroads, not only as to interstate commerce but as to intrastate commerce as well. The transfer of this power to Washington—that is, the giving of the Federal Government exclusive control—is, in my judgment, objectionable for several reasons, if what we desire is more stringent regulation. It seems to me inevitable that such a change would very much weaken the regulation of railroads for two reasons: In the first place, it would bring such a burden upon the people in charge of regulation at Washington that they would be overwhelmed and would find it physically impossible to go into the whole subject and understand the details. I may add that I would like to introduce and make part of my testimony, if you call it testimony, a speech made by Dr. Clifford Thorne, chairman of the State Board of Railroad Commissioners of Iowa, and president of the National Association of Railway Commissioners. This is an extract from his address which is described as the "President's address at the twenty-seventh annual convention of the National Association of Railway Commissioners, San Francisco, October 12, 1915."

The CHAIRMAN. If you will hand the speech to the reporter, it will be included in the record.

(The paper referred to is here printed in full, as follows:)

#### THE GREAT AMERICAN EXPERIMENT.

We are on the eve of another struggle for party supremacy. The birth and death of political parties are intensely dramatic and interesting; but, at the most, parties are only temporary things. Our form of government is of far greater consequence; it has outlived and will outlive hundreds of brilliant leaders and many great political parties. Its creation was, and its change will be, a news item of the centuries.

For several years there has been gradually developing in this country a sentiment in favor of wiping out State lines. An agitation, partly spontaneous and partly inspired by interested persons, has been carried on to support a change in the trend of our judicial decisions relative to the powers of a State to regulate business. This is reflected in speeches, magazine articles, and books.

It is now vigorously claimed that the time has arrived for the practical abolition of all State regulation. This thought has permeated the minds of some of our ablest leaders. Such a change in the American plan of government would be of stupendous importance.

It is probably safe to say that not since the Civil War has this question of the relative rights and functions of State and National Governments commanded such widespread consideration as during the past few years.

The issues of to-day again concern vast property interests. The rights of railroads, express companies, telegraph, telephone, and other public-service corporations, as well as many huge industrials, the rights of shippers, producers, and consumers, and the future policies of State and Nation on many grave questions of business are vitally concerned.

Shall we proceed as rapidly as possible to eliminate State government from our commercial life?

Judge Sanborn, as a circuit judge, in the spring of 1911, rendered a decision enjoining the enforcement of certain orders made by the Minnesota Railroad & Warehouse Commission. During the past 50 years there have been many orders of Federal courts sustaining and enjoining orders made by State authorities, but none of these have commanded the Nation-wide consideration following that decision.

The decision by Judge Sanborn occasioned the railroad commissions of eight sister States, having 70 similar cases pending in the Federal courts involving precisely the same issues, to file a brief with the Supreme Court as amici curiae, opposing the doctrine he announced. This action was later unanimously indorsed at a representative gathering of 30 State railroad commissions in their annual convention at Washington, D. C.

After the railroad commissions had determined to file a brief and argument against the doctrine announced by Sanborn, the governors at their national convention unanimously agreed upon a similar action. Finally, the Federal Government, through the Attorney General of the United States, filed a brief opposed to the positions taken by the governors and railroad commissions of the various States. Perhaps never before in the history of the United States has any case called forth such an array of briefs and arguments from the various departments of the State and National Governments.

The Minnesota rate case will probably take rank as one of the great legal contests of the present generation. The decision of the Supreme Court of the United States reversing Judge Sanborn, of the lower Federal court, brought into issue the whole subject of the relative functions of State and Nation in our scheme of government as applied to the commercial affairs of the country. It focused attention for the moment on the wisdom of our American plan of dual government.

The Supreme Court refused to decide the real issue that the public had under consideration at the time. The court said that the question as to whether Federal regulation of commerce shall supplant State regulation is not a question for the judiciary to determine; it is legislative and not judicial in character. The contest was thereby transferred from the court room to the Halls of Congress. It now becomes not a question of precedence or of statute but one of expediency—of wisdom.

Since that decision a movement has been gradually inaugurated throughout the Nation looking toward the elimination of State regulation of commerce.

Let us pause a few moments and carefully weigh the wisdom of this dual system or Federal plan.

#### IS STATE REGULATION WORTH PRESERVING?

You may start with this premise: Within the next 25 years substantially all our commercial affairs will be carried on by companies doing both State and interstate business. What is good for railroads will be good for others. Shall we abandon our State governments, so far as the regulation of business is concerned? Here is an issue which strikes at fundamentals—which has to do with the method of government.

In striving after the new we frequently fail to realize the intrinsic value of the old. Let us consider a few of the reasons justifying this Federal plan or dual form of regulation, which contemplates both a centralized governing power and State regulation.

It is true that our Constitution in many respects was a compromise, the creation of circumstances. The different Colonies were loath to yield up any of their powers. Hamilton fought vigorously for a strong National Government. In those days much fear prevailed that we might have too loose a central Government. Statesmen of that and succeeding periods were profoundly concerned over this problem. Marshall, on the Supreme Bench, became the chief instrument in cementing the national character of our Government.

However, it is a gross mistake to imagine that the jealousy among rival States was the sole cause for limiting the powers of the central Government. There existed among the framers of our Constitution, entirely independent of any compromise as to the rights of rival States, a deep-seated conviction that a Federal Government composed of several States retaining large jurisdiction was far preferable to a strong centralized Government. This is evidenced by the recorded discussions of that day. Here was a question not of State rights but of expediency, of wise government. This purpose or intent in their minds was reflected in the Constitution which they drafted.

One whose writings inspired much of the thought of that time was Rousseau. His "Contrat social" became a standard textbook for the makers of government of those days. In this work Rousseau stated:

As nature has set limits to the stature of a properly formed man, outside which it produces only giants and dwarfs, so likewise, with regard to the best constitution of a State, there are limits to its possible extent, so that it may be neither too great to enable it to be well governed nor too small to enable it to maintain itself single handed. There is in every body politic a maximum of force which it can not exceed and which is often diminished as the State is aggrandized. The more the social bond is extended the more it is weakened, and in general a small State is proportionally stronger than a large one.

"A thousand reasons demonstrate the truth of this maxim. In the first place, administration becomes more difficult at great distances, as weight becomes heavier at the end of a longer lever \* \* \*. The same laws can not be suitable to so many different Provinces, which have different customs and different climates and can not tolerate the same form of government \* \* \*. The chiefs, overwhelmed with business, see nothing themselves; clerks rule the State. In a word, the measures that must be taken to maintain the general authority, which so many officers at a distance wish to evade or impose upon, absorb all the public attention; no regard for the welfare or the people remains, and scarcely any for their defense in time of need, and thus a body too huge for its constitution sinks and perishes, crushed by its own weight."

There is much truth well stated in the foregoing sentences. It is quite evident, however, that Rousseau had not realized the full possibilities of the federal plan of government, as worked out in America, whereby the advantages of intelligent, efficient local home rule and the large empire, compelling respect, are combined into one whole. It is this combination, this federated cooperative plan which is the distinguishing feature of the American Constitution.

From the earliest records we learn that men have always been seeking for some form of government which would come close to the life and thought of the average man, which would keep in close touch with the progress of business and social life and at the same time be large and strong enough to keep peace at home and abroad. Powerful centralized governments or innumerable small

principalities have been common. There seems to be an inevitable tendency for a government either to fall to pieces or to gravitate into a strong, centralized domineering power.

What is the fundamental characteristic of our Government which distinguishes it from all others preceding ours? It is not the republican idea of government, for the world has seen many republics. It is not the formation of a large empire, for there have been larger. It is the creation of a nation large and strong enough to assert its independence among the world powers and to compel respect from others and obedience and order at home, at the same time combined with a form of government securing real, tangible home rule to the various independent sovereignties making up that nation. The delicate balance between the central and local authorities in America was a novelty among the nations up to the end of the eighteenth century. This was not the fruition of any one man's reasoning, but largely the result of circumstances; however, a most happy result, which has surpassed the expectations of those who conceived the plan. The builders wrought better than they knew.

For many years our Government was referred to among political circles in Europe as "the great American experiment." They said it would be impossible for this Nation to live without developing into a strong central form of government, gradually wiping out of existence all separate State sovereignties, or else we would become split up into a number of distinct nations. Their words seem almost prophetic. The tendency to swing from one extreme to the other has been very pronounced in our history. The movement toward the creation of a large number of separate nations culminated in the Civil War. The result of that costly struggle put the stamp of success upon "the great American experiment."

When the success of this novelty in statecraft became assured, the basic features of the plan were followed by other countries. England has been forced to abandon the strong centralized form of government for her large Empire and to substitute the federal principle in most of her colonies. It is now being seriously proposed to go a step further and to break up the small island itself into a number of separate sovereignties. A metropolitan daily a few years ago contained the following dispatch:

"The first lord of the admiralty to-day advocated a change in government whereby England would have a number of parliaments, on a plan similar to the State legislative system of the United States.

"Mr. Churchill outlined a system of federation for Great Britain. He said England alone was too large for a single parliament, which would be strong as an imperial parliament, and conflict of opinion would be disastrous.

"He suggested that England should be broken up into Provinces, such as Lancashire, Yorkshire, Midlands, and London, and pointed out that the United States conducted its business through a larger number of parliaments in proportion to population than if there were 10 or 12 parliaments in the United Kingdom.

"'The British Government,' said the first lord of the admiralty, 'intended Irish home rule to be the forerunner of a genuine system of self-government in all four countries of the Kingdom.'"

Germany and other nations followed our example during the past century.

In the early part of the nineteenth century Tocqueville stated, as to our Constitution:

"This Constitution, which may at first be confounded with federal constitutions that have preceded it, rests in truth upon a wholly novel theory, which may be considered a great discovery in modern political science."

In the latter part of the nineteenth century the eminent statesman, Gladstone, described this American plan of government as "the most wonderful work ever struck off at a given time by the brain and purpose of man."

Now, in its heyday of prosperity, when its success has been proven and is acknowledged on all sides, it is proposed to gradually destroy the chief feature of the American plan. That which renders the United States unique in all history is the organization of a vast empire in territory and population, so as to preserve the largest possible home rule to the various parts of the Nation. In the name of a new nationalism it is now proposed to eliminate this basic characteristic of our Government.

The fact is that men of the eighteenth century clearly anticipated just such situations as are here presented in the attempt to take away powers from the several States, powers which were undoubtedly intended at the beginning and

which have been thoroughly established, exercised by many States, and recognized by all courts for a generation. Jefferson's autobiography contains the following remarkable passages:

"I deem it indispensable to the continuance of this Government that they (our judges) should be submitted to some practical and impartial control; and that this, to be imparted, must be compounded of a mixture of State and Federal authorities.

"It is not enough that honest men are appointed judges. All know the influence of interest on the mind of man, and how unconsciously his judgment is warped by that influence. To this bias add that of the esprit de corps, of their peculiar maxim and creed, that 'it is the office of a good judge to enlarge his jurisdiction,' and the absence of responsibility; and how much can we expect in impartial decision between the General Government, of which they are themselves so eminent a part, and an individual State, from which they have nothing to hope or fear? We have seen, too, that, contrary to all correct example, they are in the habit of going out of the question before them, to throw an anchor ahead, and grapple further hold for future advances of power. They are, then, in fact, the corps of sappers and miners steadily working to undermine the independent rights of the States and to consolidate all power in the hands of that Government in which they have been so important a freehold estate. But it is not by the consolidation or concentration of powers but by their distribution that good government is effected. Were not this great country already divided into States, that division must be made that each might do for itself what concerns itself directly, and what it can so much better do than a distant authority." (Extract from the autobiography of Thomas Jefferson, p. 81, vol. 1, of the writings of Thomas Jefferson, published by Taylor & Maury, Washington, D. C., 1853.)

Mr. Jefferson, in his first inaugural address, summarized what he termed "the essential principles of our Government," and amongst the first of these he placed: "The support of the State governments in all their rights as the most competent administrations for our domestic concerns and the surest bulwarks against antirepublican tendencies."

If the National Government is permitted to gradually absorb those functions formerly exercised by the States it will only be a question of time until some great evil will demand some great remedy. Agitation will follow agitation. There will be no opportunity to try out the new proposal; the Nation as a whole must adopt it or reject it. Those will be trying times, when the foresight of the best of us will differ and the future of this American system will be at stake.

It would be wise for us to weigh well the advantages of that which we have before exchanging it for that which we have not.

We believe the Federal plan as conceived by our fathers is better than the new nationalism. We believe the States are a distinct factor in our scheme of Government. There is a function for the National Government to exercise and there is a function for the State. This Federal plan is a sort of safety valve against political and industrial revolution, and it is the greatest ever devised by the makers of government. New ideas are tried out in a few States before they are adopted in others or by the Nation.

The State government is far closer to the local needs and demands of traffic conditions than is the National Government.

Practically every important advance step in the regulation of railroads, corporations, and the great consolidations of our generation has originated with the States.

The first legislative acts to regulate the business of our railway companies were passed by a few Middle Western States. This occurred in the early seventies, many years before the Federal Government ever took a similar step.

At first these commissions were largely figureheads, but several States provided for commissions with full power to fix maximum rates during and prior to the year 1887. It was not until 19 years later that the Federal Government gave the Interstate Commerce Commission actual power to fix maximum rates.

It was in the nineties that the Supreme Court stated that the fair value of the properties devoted to the public service should be the basis of all computations relative to reasonable rates, and it was in the nineties that one of the States made a valuation of her railway properties. Since then 20 different States have valued one or more railroads. It has now been more than a decade since the Interstate Commerce Commission first asked Congress for facilities to make a valuation of railway properties in this country. Year after year

they petitioned for this, and their efforts were entirely in vain until March 1, 1913.

Each important step of progress along these lines has been initiated in the States. No one except the ignorant or he who is not in his right mind will claim that we have solved these problems concerning the regulation of railroads. We are only at the threshold of this subject, pioneers along the edges. Now, at this stage is it wise to cut off that which experience has demonstrated to be the principal source of progress?

There is a natural reason why the States have always acted first and will continue to do so in the future. It is easier for a small group of men of moderate means, realizing the value and force of a new line of action, to command the attention and consideration of a State. In order to secure the serious consideration of the same thing by a great nation it takes many years of agitation and large sums of money; indeed, it is doubtful if a nation scattered across a continent like ours would ever have taken many of these steps for generations to come had it not been because they proved practical and effective when tried in different States. It is only the rich, the extremely powerful, who are able to start out and persuade the Nation along a given line of policy; but if one State adopts it, and it proves to be wise, then another State adopts it, and then another State, and finally it grows until the Nation adopts it. That is the natural result of our method or system of government.

These facts are true not only as applied to railroads. We abolished slavery in the various States long before we did in the Nation.

We have had efficient temperance legislation in the States long before any substantial steps have been taken by the Nation. We had pure-food acts in the States long before the Nation acted.

As one State after another finds the action of their neighboring Commonwealth to be wise and good, they have followed her and adopted similar provisions. In this way progress or reform is gradually brought about in the Nation as a whole. The States form a sort of experiment station, and where they have gone wrong the courts are quick to check them, or there is developed a tremendous public sentiment in the country as a whole which quietly destroys that which is not wise.

It is no reflection on State commissions that they should have been reversed occasionally; they have been blazing the way. In the matter of the regulation of railroad rates these carriers can have little to complain about as to the different States. The records show that the Interstate Commerce Commission has been reversed by the courts on railroad questions as often as all the State commissions put together. Where mistakes have been made the companies have had ready access to the Federal courts. So long as this continues the railroad companies have nothing to fear. Upon the other hand, they have much to hope for if they can succeed in destroying the State regulation of rates.

In view of the remarkable history of the origin of these movements, it is little wonder that the carriers are extremely solicitous in their efforts to prevent and to remove the possibility of further advance steps in the different States.

This novelty in statecraft, this Federal Government of ours, which combines the strong central government with local self-government into one whole, has some elements of value and strength never dreamed of, perhaps, by those who worked out the details in the latter years of the eighteenth century. It is precisely this local self-government which keeps regulation close down to the needs and demands of different localities and different States.

It has been said that the railroad business is so complicated, State business is so closely interlaced with interstate business, and the detail of the costs, rates, earnings, values, and the physical handling of the traffic are so interwoven and connected together that it is an impossibility to make any separation. Therefore it is claimed that this business is of such a national character that it requires a single national tribunal to regulate it. An extract from a recent report of Special Master W. S. Thorington, sitting in the Central of Georgia and Western Railway of Alabama rate hearings, is in point on this separation between local and interstate business. He stated:

"The vice of such a claim consists in the assumption of the unity and inseparableness in all cases of the two classes of traffic."

"That such a separation is difficult or not possible with the exactness of mathematical certitude is very generally admitted, but it would be a startling canon of construction that a State is to be deprived of a right so vital because

of difficulties in the way of its exercise when such a principle has never been applied to the individuals seeking to enforce ordinary rights in the courts."

One sentence will contain an answer to claims of this character, that it is difficult to separate the expenses on local and through hauls:

Even after you have removed the State lines the problem of reasonable local rates still remains.

The longer the hauls and the higher the rates the better it is for the stockholders in railway companies. Upon the other hand, it is to the interest of the public generally to have short hauls as well as long hauls and to have rates just as low as they can reasonably be placed, providing it does not seriously interfere with the prosperity and growth of the railway business. In order to tell whether local rates are reasonable or not it will be necessary always to make some division between operating expenses, earnings, and values. This will be true whether State governments or whether the National Government has jurisdiction over these local hauls. The problem of the reasonable local haul in all its complexity would still be with us even if you were able to destroy State regulation.

Occasionally one hears about various examples of freak legislation on the part of some States. These are very rare. The argument that such acts impeach the whole body of State legislation is like saying that one sinner in a church renders the whole church a failure. This argument is actually advanced from time to time; the only thing it proves is the assinine stupidity of the man who makes the argument. There have been a hundred wise and beneficial laws enacted to one that is foolish; and generally the unwise law has been quickly relegated to the realm of oblivion by the courts or by the solid good sense of public opinion causing its repeal.

Should it ever be proven in any given case that a State has reduced its interior rates with the deliberate purpose of favoring its own industries to the injury of a neighboring State, then it will be ample time for the courts to interfere. There is not a State commissioner in America who supports such a policy. (See *San Diego Land & Town Co. v. Jasper*, 189 U. S., 439; *Knoxville Water Co. v. Knoxville*, 189 U. S., 434, 439.)

The real issue is practical rather than theoretical in character. It is not whether we shall abolish all State regulation, but, instead, whether this or that is a proper function to be performed by the State. Whenever the act of a State legislature or commission does, in fact, conflict with the findings of the Interstate Commerce Commission as to what is just and reasonable, and directly interferes with and places a burden upon interstate commerce, practically all of us, at least the vast majority, are ready to acknowledge that such a condition of affairs should not continue. Either the courts or some other tribunal not a party to the disagreement should have power to determine which rate is reasonable. If additional legislation be needed to clarify this situation, efforts along that line will ultimately succeed. But that does not affect to the slightest extent the other proposition—that where a given act of a State tribunal does not interfere with interstate commerce it should stand. The development of the law has been along the line of determining what does and what does not interfere with interstate commerce. This kind of legislation and judicial interpretation have been in progress for many years. But it is a wholly new and unheard-of proposition to do away with State regulation. This is a doctrine that jeopardizes our institutions.

In case of a discrimination between rates, that one which is unreasonable should yield. If such a conflict exists between State and Interstate rates, let the Supreme Court determine which one is reasonable and must stand, and the other should be disapproved. The judiciary has no power to determine reasonable rates for the future, but it has exercised the power of determining the reasonableness of rates already established. Even if that were not so, it would be better to amend the Constitution in that respect than to devitalize our dual system of government, by a virtual amendment in another manner.

Chief Justice Marshall retained to the fullest extent entire appreciation of the importance of the Federal judiciary and the National Government, thereby securing to us and to posterity one Nation instead of many; yet Chief Justice Marshall was capable also of realizing the value of the States in our scheme of government.

In the famous case of *Gibbons v. Ogden* (9 Wheat., 1, 203), Marshall, commenting on these powers reserved to the States, said:

"They form a portion of that immense mass of legislation which embraces everything within the territory of a State not surrendered to the General Gov-

ernment; all which can be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State, and those which respect turnpike roads, ferries, etc., are component parts of this mass."

Mr. Justice Hughes, in the masterly opinion rendered in the *Minnesota Rate case*, gives recognition to the same principle. He says:

"Our system of government is a practical adjustment, by which the national authority as conferred by the Constitution is maintained in its full scope without unnecessary loss of local efficiency."

The great benefit urged on behalf of exclusive national control is uniformity. We have made a sort of modern fetish out of this slogan, "uniformity." Anything done in the name of uniformity we assume to be right and proper. To be sure uniformity is very greatly to be desired. We all agree on that proposition. But there is something even better and more important than uniformity—that is, wise regulation. Rates may be uniformly high or uniformly low. Rules of service may be uniformly harsh and rigid or uniformly lax and weak. Proof that they are uniform does not prove that they are just.

Wise regulation contemplates vastly more than mere uniformity. If uniformity were the summum bonum, we should have a world government prescribing what time of the year we must plow and reap, what kind of education we shall give to our children, etc. Harvest time depends somewhat upon the particular portion of the world in which you live; education should depend somewhat upon your circumstances and probable future life.

There are some things which a world government could do better than National or State governments. A world government could compel peace amongst the nations; but it could not efficiently prescribe the character of sewers to be installed by the city of Pittsburg, Pa., or Des Moines, Iowa. There are some things a national government can do better than a State or city government. But we do not want to leave it to the National Government to prescribe the character of telephone service our city shall have. I do not want to leave it to Congress to determine the time I shall retire at night. There are some things which might well be left to a world government, there are others which can be cared for better by our National Government, and others by the State government; and still others by the county, and city, and family. And there are a few matters that even the individual, himself, can best perform, strange as it may seem to some.

The real problem is how to secure wise regulation. Will a strong centralized government bring the best results, or is the Federal plan—joining national and State control—preferable? The issue concerns the method of government, one of the profound problems at the basis of all organized human life.

The tremendous growth of interstate commerce seems to have raised the query amongst some of us as to whether separate State governments are longer needed. The wisdom of local self-government and the Federal system of statecraft is up for consideration. The Sanborn doctrine strikes at the very vitals of our present system.

There has been a marked tendency to swing from one extreme to the other. At one time the prevailing sentiment favored independent States. It was the genius of a Marshall that created the great public sentiment, later crystallized under the leadership of Lincoln, which saved our country from being transformed into several separate nations. To-day the pendulum is swinging in the other direction. We are anxiously waiting to see if there will be other champions of our Federal system, our American plan of government, men who will have the far-sighted vision and the courage to save the country this time from going to the other extreme. The life of our dual system of government is again at stake. Many of us have lost sight of its value in the glamour of a new nationalism.

Too much "nationalism" is just as wrong as too much "States' rights." There is a happy medium.

It is not this Government as one Nation, nor the several States, but the combination in one Federal plan that has rendered such a distinct contribution to the welfare of humanity. It is this Federal plan that must be most jealously guarded. A tendency one way or the other, toward centralization or toward decentralization, is dangerous.

It must be expected that from time to time there will be strong men, men who are ambitious to leave distinguished names in history, who will champion a powerful, centralized government in the United States. There always has been, and there always will be, a dramatic attraction in the building of great

empires about a central authority; the glory of power in a supreme authority interests and awes even those who are governed.

The strength of nations does not lie in the vastness of the territory under one highly centralized and supreme authority. This truth has been centuries in the learning.

That government which hugs closest to the sober and mature judgment of the people and keeps in touch with the demands of changing conditions is the one which best fulfills its mission and will live the longest. The makers of government must set as their goal not the creation of an extensive centralized machinery but a human organism, capable of reaching out and searching after and meeting the demands of life.

**Mr. BRYAN.** In this address he calls attention to the objections, which I desire to emphasize, and treats them much more elaborately than I can in what I have to say to you. All I can do is to present substantially the same thought in my own way.

When you take the railroad systems of this country, involving, as they do, I think, 160,000 miles—is it not?

**Mr. FAULKNER.** It is over 200,000.

**Mr. ESCH.** Two hundred and fifty thousand.

**Mr. BRYAN.** Mr. Chairman, I will have from time to time to inquire as to the details, because I am better acquainted with the principles involved than I am with the figures. When you take the railroad systems, involving the management of some 250,000 miles of railroad, and collecting earnings amounting to—

**Mr. ADAMSON.** It was almost three billion last year.

**Mr. BRYAN.** Yes; over three billions, I think—an amount at least twice the revenues of the Federal Government.

**Mr. ADAMSON.** I beg your pardon, Mr. Chairman, for interrupting. The witness asked that question; it was not I.

**Mr. BRYAN.** I hope you will help me, because I come before you, gentlemen, without any opportunity to prepare such a statement as I would like to present, and will ask permission to make such additions and amplifications as may seem best when I have more leisure.

When you take the management of a system of railroads with this amount of mileage and collecting more than twice, as I say, the revenues of the Federal Government, and when you remember how many men it takes to conduct this Federal Government, you can see that you are either going to build up an enormous bureau with a multitude of officials or else you are going to attempt to do this enormous work with a few men who can not possibly attend to it.

The first suggestion is, therefore, that in the very nature of things there can not be an efficient regulation from this central source without the creation of machinery that is far beyond the calculation, so far as I have seen it stated, of those who have considered it from that side.

The second objection is a fundamental one, namely, that the further you remove the work of regulation from the people the more difficult it is for the people to control their representatives. If there is any virtue in representative government, it must be admitted that the representation is best when the representatives are nearest home and most completely submissive to the will of the people. The tendency that we have observed throughout this country is already sufficient to have impressed itself upon several States to put back into the hands of the people a power with which they had parted through the process—that is, reclaiming the Government through

the process of the initiative and referendum. In that we see evidence of a confidence in the people and a distrust of the people's representatives.

Now, this distrust rests upon several foundations; that is, there are several things that contribute to this distrust. In the first place, there is the natural bias of the man. Every man has a natural bias. If the word "natural" is considered, I possibly ought to say that it is a bias that is controlling, whether it comes in youth or comes after maturity. It is a bias on one side or the other of the great line that runs through society. There is just one division, as I understand it, between men, and that is the line that separates a man who is at heart a democrat from the man who is at heart an aristocrat; and I need not tell you gentlemen that I am not using the word "democrat" in a partisan sense. The word is 2,000 years older than the Democratic Party. It is a word which describes an attitude of the human heart, and that attitude which it describes is just the opposite of the attitude described by the word aristocrat. They do not differ in honesty—the democrats and aristocrats. They differ in bias, in point of view. The democrat believes in a society built from the bottom. The aristocrat believes in a society suspended from the top; and because of this difference of opinion the democrat believes that things ought to come up from the people. The aristocrat believes they ought to come down from the few.

To illustrate it, the man who is at heart a democrat believes that legislation should be for the masses. His philosophy is that if you just make the masses prosperous that prosperity will find its way up through all the classes that rest upon the masses. The aristocrat, because of his point of view, namely, that society is suspended from the top, says—and he says honestly, for he believes it—legislate for the well-to-do and then be patient and wait until their prosperity leads to those below.

Now, when you are choosing a representative everything depends upon the point of view. He may be just as honest a man as you could find, but if he really believes that the well-to-do must take care of the rest of the people his decisions are going to be entirely different from the decisions of the man who takes the other point of view and believes that society is built from the bottom and that good comes up from the masses.

Now, it is not always easy to know a man's fundamental bias until you test it, and the further he is from you the more difficult it is for you to follow him and to measure him and to judge whether he represents you or somebody else. A democrat—taking the word in its fundamental sense—believes that the representative ought to act for the people. The aristocrat believes he ought to think for the people; and if you take all this railway business to Washington you have got to depend for all your regulation upon the men who are elected to Congress and to the Senate, who come a long distance from home, and who are so remote from their constituency that the constituency is not able to watch over them, or rather to watch them, and to measure their fidelity in the matter of representation; so that when you surrender this power that the States now have and put it all here in Washington you make it more difficult for the people to watch the men who are their exponents and their spokesmen.

The second is that the temptations are much greater if you put the power here than if you kept it at home, because if an act of Congress is to affect these railroad systems to the extent of \$50,000,000 a year or \$100,000,000 a year, the railroads find it to their interest to bring pressure to bear on the Members of Congress and the Senators who are to act. I hope you will not think I am reflecting on the railroads when I say they may yield to temptation to exert an influence. I have known them to do so. You may remember that a few years ago some money was appropriated for the building of this depot. Some of you may be able to tell me how much it was. Was it not two or three millions?

Mr. ESCH. I think the District appropriated about three millions and the Government about an equal amount.

Mr. BRYAN. Congress appropriated something—

Mr. CULLOP. The same as the District—one-half.

Mr. BRYAN. At that time two of the leading railroads that enter into this place had their lobbyists in the corridor of the Capitol issuing passes to the Members, and I know of two cases where the railroad lobbyists refused passes to men who had voted against the railroads' position in this question. One was a lobbyist of one of the roads and one was the lobbyist of the other. If they will send their lobbyists to the Capitol with their pass books—of course they can not do it now, because the pass business has been prohibited; that is, the issuing of passes has been stopped, and that was only a few years ago—if they will send their lobbyists to the corridors of the Capitol with their check books to purchase, by passes, the votes of men on so small an appropriation of \$3,000,000, what will be the temptation when a brief statute may mean \$50,000,000 or \$100,000,000?

I was in Congress for a couple of years, and I know what difficulty we had whenever any question affecting the railroads came up. You will recall that it took 10 or 15 years to secure a change in the law relating to the Interstate Commerce Commission, enlarging its powers. It took 10 or 15 years to secure it, after the commission had asked year after year that this power be granted. What was it that prevented it? It was the influence of the railroads in your National Capital. Your railroads were potential enough and powerful enough to thwart the will of the people on that subject and to influence the Senators and Members of Congress; and I remember that the president of one of the railroads was elected to Congress, and he came, after he was elected, under the privileges of our rules, and, sitting on the floor of Congress, he directed the fight against the measure that the railroads were opposing.

Now, I only mention these as some of the things you have got to consider, and when you take from the States the power that they have and put it all here you make every congressional contest a fight with the railroads of this whole country, for, remember, that the railroads of the whole country will be interested in the election of every Congressman in every district. They will be interested in the election of every Senator from every State, because one vote may decide a question that may mean \$10,000,000 or even \$100,000,000 to them.

So, it seems to me the direct result of this will be to bring into national politics a corrupting force greater than we have ever known

before, and that every Congressman will be subjected to pressure after he gets here, and that we will find these men picking out the men who are to run and furnishing them the means with which to secure nominations, and with the means with which to secure elections—not necessarily doing things which necessarily violate the statutes. They may not furnish money, because under our present law that would have to be accounted for and corporations can not contribute to campaign funds; they can not furnish passes, because that has been prohibited; but remember that the railroads run into all the towns of any importance, and they have their agents there; they have their attorneys; they have their station agents and their adjusters, and they have the men whom they call upon to testify; if damage is done, there are certain ones whom they call to testify as to injuries; if there is an injury, there are certain physicians who testify as to the extent of the injury. They have their entire working force, and when you put the entire working force of all the railroads behind a candidate for nomination and, after he is nominated, behind the candidate for election, you bring into politics a tremendous special interest that can not but have its influence upon the politics of the country, and when you send to Washington a man who comes as the representative of any special interest, he is open to the solicitations of every other special interest, for the special interests have to stand together, and any man who comes with a commission—a secret commission—from any special interest is here to trade his vote on any subject with the representative of any other special interest that needs his help.

Now, that, to my mind, is a consideration that can not be overlooked by those who are dealing with this subject in a large way and in an official way.

The third point is that the absorption of legislative power by the Federal Government and the surrender of all legislative power by the State governments will practically obliterate the lines of the States and weaken them in the discharge of their duties, while it will tremendously increase the centralizing forces that are at work in our Government. I believe that no one has better stated the merits of the dual form of government than Webster when he spoke of an indissoluble union of indestructible States.

Now, it is just as necessary that the States should be indestructible as it is that the Union shall be indissoluble, for our Government rests for its success upon the plan that enables the units to take care of the things that relate to them, leaving to the Federal Government the control of the things that relate to all the States. It is just as necessary, to my mind, that the local unit shall be preserved and shall be safeguarded as it is that we shall act as a unit on all matters that affect the Nation. And that is necessary for exactly the same reasons that I have mentioned before. The people at home can better attend to the things at home, and if this Federal Government attempted to take care of all these things it would so enormously increase the work to be done that it would be absolutely impossible to do it with any scrutiny.

What do you find here? I have not seen the statement for two or three years, but I remember when we had 10,000 bills introduced in one Congress.

Mr. ADAMSON. It has got to 30,000 now.

Mr. BRYAN. Well, gentlemen, you see my service is of a very ancient kind, and there has been a great growth since. Thirty thousand bills. What Congressman or Senator attempts to consider, to examine, or to understand any large percentage of the 30,000 bills that are introduced? Of course, you say that the committees sift these out.

Mr. ADAMSON. If you will permit me to answer that question, I will tell you that some Congressmen are so wise that they pretend to study all of them and pretend on the floor of the House to know more about them than the committees that unanimously reported them.

Mr. BRYAN. I notice you say "pretend."

Mr. ADAMSON. Yes, sir.

Mr. BRYAN. That would express an opinion. According to your judgment it is mere pretense?

Mr. ADAMSON. I think generally so. There is not one case in ten thousand that a man knows more about them than the committee.

Mr. BRYAN. I think you are right.

Mr. SIMS. In the recent Congress there were over 40,000 bills and joint resolutions introduced in both Houses.

Mr. BRYAN. So you see how conservative I am, gentlemen, in my statement.

When it comes to the committees you have a number of committees, and when you divide 40,000 bills and resolutions among the committees of the Senate and House you can see what a number of them go to one committee. How many committees have you in the Senate or House?

Mr. ESCH. About 58 in the House.

Mr. BRYAN. That would mean an average of something like 650 bills to a committee.

Mr. ESCH. Of course over three-fourths of those bills are private bills, pension bills, etc.

Mr. BRYAN. Of course there would be a great many of those, but quite a number of them are on general subjects.

Mr. ESCH. That is true.

Mr. BRYAN. When you take the number of bills that go to the committee you see that with the work that a committeeman has to do it is impossible for him to know much about all these bills, so that you have your subcommittees, and these bills are divided among the subcommittees, and then the subcommittee divides the bills among a still smaller number, and finally you get down to one man who takes a bill and reports it, and what you know is what one man reports largely, and unless it is a matter of some great public interest you have simply the opinion of one man who has investigated it, and that will largely guide the thought of the rest of the people.

Mr. HAMILTON. Mr. Bryan, in practice that seems to me scarcely to be the fact. Committees take up bills for consideration, and when they do take up bills for consideration with a view to reporting upon them it is the custom of those committees, so far as I have had experience, to examine them very, very carefully, because each member of the committee has certain responsibility. I think, in fairness, that ought not to be said.

Mr. BRYAN. I am very glad to have any correction made. I am only stating it mathematically.

Mr. HAMILTON. Exactly.

Mr. BRYAN. If the number of bills averages 650 to a committee——

Mr. HAMILTON. Yes, sir; but comparatively few of those bills are reported.

Senator CUMMINS. I suggest that the rule of the committee ought to be observed.

Mr. HAMILTON. I was not the first to violate it.

The CHAIRMAN. There have been many violations of the rule, and as a member of the committee has called attention to it I will say I will enforce it hereafter.

Mr. BRYAN. Let me say, Mr. Chairman, that I should not like to have the rule invoked if it is with the idea of protecting me, because I am here to contribute, if I can, to the understanding of this subject, and I am very glad to have any member of the committee interrupt me at any time.

The CHAIRMAN. Mr. Bryan, the rule is not invoked with a view to protecting you. We know that you are abundantly able to protect yourself. But the rule, as originally made in the committee, was that the committee would not interrupt a witness whilst he was making his opening statement; that after he had closed they would then examine him in order, in an orderly way.

Mr. BRYAN. I must hurry through, because I want to give you time to ask questions.

Mr. ADAMSON. I understand the witness himself may refer to any member of the committee, or all of us, and ask us any questions he wishes?

Mr. BRYAN. Yes. I will now refer to you all.

The CHAIRMAN. The committee has not yet ruled on that question.

Mr. ADAMSON. I make the point.

Mr. BRYAN. But the point I am trying to emphasize is this—that the dual character of our Government is essential to its permanence. The fact that we now have 40,000 bills, when a few years ago we only had 10, gives you some idea of what it is going to be, for our country is a growing country—50 years from now the work of the Federal Government will be very much larger than it is now, with no change whatever in this organic division. But if we are to consolidate things here at Washington it only multiplies the demands, and I believe that it necessarily follows that in the course of time, if not now, the work that would devolve upon this Government would be so great that it would be physically impossible to give the same careful attention to these questions that could be given by these units acting alone, and my observation of Congress was that a measure that affected a locality was really left to the people of that locality. For instance, if a subject came up in regard to oysters down on the Chesapeake, the men who represented the districts immediately affected would be the ones who would have almost absolute, exclusive control of the action on that measure. In other words, if you attempt to put everything here, it will result in our really turning it over to the people who act for those particular sections, and they act under much less restraint than the people who act upon them at home and are nearer to the people.

What I wanted to say I have said; that is, the principles that I speak of I have presented. I believe that the transfer of this policy would bring a tremendously increased pressure to bear upon those who deal with this question. That it would centralize this Government more than anything else that has ever been suggested since this Government was organized. When you remember that these railroads are now actually collecting more than twice—we have not the exact figures—but more than twice the entire amount that the Federal Government has collected, you can see that to bring that business from 48 States and deposit it here would work such a revolution as we have never known in our governmental work.

And I may remind you of this, that the lessening of the restraint is not merely theoretical—that is, the statement that the restraint would be less is not a matter of theory—it is a matter that is demonstrated by experience; and I may add, if you will not accept it as a reflection upon anybody who appears for the railroads, that the fact that the railroads ask for it is conclusive proof that it is not intended for greater regulation.

When I say that those in charge of the railroads are like other people, I say all that can be asked. If they say they are better than other people the burden is on them, and they will find it difficult to present the evidence. If I say that they are just like other people, selfish, biased, looking after themselves, I am not only stating a general fact that is universally applicable, but I am stating a fact that can be proven by abundant testimony, if the truth of it were challenged.

The fact that these people are here asking for the surrender of all the power the States have is proof conclusive that the whole purpose of this is to get away from regulation and not to get a better regulation, and that is supported by what we have seen.

Where have our laws come from that have given us whatever regulations we have had? Largely from the States. We have a 2-cent rate, for instance, that has been given us in a number of States. To-day the railroad in some instances, I will not say in all, are charging more for the interstate than the sum of the local rates, and I know several cases where the people, in order to avoid the higher rate, divide at the State line and then cross over.

I had an experience myself the other day in going from one city to another. The man who was with me said, "I am going down to get my ticket; I will get yours at the same time." I said, "I wish you would." When we got on the train I said, "How much do I owe you?" He gave me the amount, and he said, "I only bought to a certain place, because by buying there we get the 2-cent rate, and we save 85 cents." So my friend had been good enough to save me 85 cents by buying there.

A few years ago I wrote to a Member of Congress and suggested to him that we ought to have a Federal statute requiring the railroads to sell interstate tickets for a price not greater than the sum of the local rates, and surely if there is any proposition that rests upon sound economic grounds it is that a railroad can carry a passenger the whole distance for as little per mile as the two parts of it.

My friend could not interest Congress in so simple a proposition, and to-day, with our Congress in session, we have no successful effort,

and I am not sure whether we have even any unsuccessful effort, but we certainly have no successful effort to give to the people of the Nation the protection that has already been given to the people of the States by these States.

Now, if we can not get through Congress a measure that will give to the people who cross State lines as low a rate as they can get in different States through which they travel, certainly, gentlemen, he will have to find some other reason for advocating this national transfer than the bare restraining and restriction of railroads.

Mr. ADAMSON. Mr. Bryan, I think that is the proper place to answer your appeal for suggestions. I referred that bill to the Interstate Commerce Commission, and the substance of their reply was that to pass that bill would be to enable the different States to make the rates for the Interstate Commerce Commission, and that they could not approve that.

Mr. BRYAN. I do not see that that answers the proposition.

Mr. ADAMSON. That was their reply. Did I say "answer" or "reply"?

Mr. BRYAN. I will call it "reply." But that does not change the fact that when it comes to Washington there are so many ways of denying the relief that is desired that the relief is more difficult to secure than it is at home where the people live near to their constituents and go back to their constituents and their constituents are more amenable to public opinion.

These are the general objections I have to this, and while I state them as my personal objections, because I do not come here in a representative capacity, there is no one that I know of for whom I can speak, yet I am satisfied that the opinion that I present is entertained by quite a good many people. And I believe that when the issue is presented to the people and the people understand it that there will be a very unanimous objection to the surrender of the power of the States over these corporations. So that the proposition that I beg to submit as a substitute for the proposition which you are discussing is that national remedies should be added to State remedies, and not substituted for them.

There is no reason why Congress should not use all the power that it has for the regulation of railroads, and there is no reason why the fullest use of its power should in the slightest degree interfere with the sole and entire use of the powers of the States.

And when the Federal Government has done all it will do, and when the States have done all they will do, we will not have any more regulation, in my judgment, than the people of this country need; and any attempt to destroy the power of the State, and to consolidate all authority at Washington would, to my mind, inevitably lessen, and not increase, the restrictions and restraints and control; and I think a removal of all legislative power would, very naturally, be followed by a removal of all judicial power; and I need not tell you, gentlemen, that it makes a great deal of difference whether a man who has a cause of action against a railroad is able to prosecute it in his county, or must travel around and prosecute it before some United States court. There are two ways of denying justice: One is to absolutely refuse it, and the other is to make the securing of it so expensive that a man can not afford to prosecute his claim; and if this theory, as I have seen it presented here, is to be adopted, and the

States are to surrender all their power and the Federal Government is to assume it all, I think the same arguments that would lead to that, would very soon lead to the surrender of all judicial control, and then, if a man had a cow run over, he had better give the rest of the herd than sue for the cow; and I am convinced that the general public is not entertaining the thought of giving up any power it has to regulate these corporations, that have become so great that the God-made man is at a great disadvantage when he comes to compete with the man-made corporation. If you will pardon me for speaking in so rambling a way—I have not had time to present this in a logical way; I have been so occupied with matters that I could not put off, that since I learned I was to come here this morning, I have had no time to arrange my thoughts in any logical order. There are other things that I would be glad to present on other subjects, but I understand you are now discussing only this question of the railroads—I mean, the change in control.

The CHAIRMAN. We would be glad to hear from you upon any of the subjects that are embraced in resolution No. 60, Mr. Bryan.

Mr. BRYAN. Would the question of what a railroad should be allowed to earn come under that?

The CHAIRMAN. Yes; any legislation relating to interstate commerce transportation.

Mr. BRYAN. But you adjourn at 12, and I want to give you plenty of time to ask questions, because I think I will not be able to come back after 12.

The CHAIRMAN. Yes.

Mr. ADAMSON. Capitalization is a very important feature, is it not—financing?

Mr. BRYAN. Yes.

The CHAIRMAN. The questions of Government ownership, capitalization, control of stock and bond issues, national incorporation, and every subject that relates—

Mr. CULLOP. Financing.

The CHAIRMAN. Yes.

Mr. BRYAN. I think it will not take me long to express an opinion, but I recognize that the expression of an opinion is not of value to the committee, and I am sorry I can not fortify my opinion with something more substantial.

As to Government ownership, I have believed for a number of years that it was inevitable, and inevitable only because the railroads will not consent to effective regulation, and I think it is now some 10 years since I had occasion to say that unless our experience with the railroads was different from our experience with municipal corporations, the people, for their own protection, would be compelled to take charge of the railroads. Our experience with municipal corporations has been this: That the men who own the franchise have so large a pecuniary interest that they are always alert and watching; while the individual citizen has so small an interest, relatively, that he is not so alert or so watchful, and the result has been that in cities of any size the people holding the franchise have felt that it was necessary for them to control the election of councilmen, or whoever have the authority, in order to protect their interest; and some of you may have heard the argument made that they do not want to enter politics, but they have to enter it in order to protect themselves from

the demagogue; and I may add that the first time this was presented in an official way by any high authority—this matter of national incorporation—I remember that the president of a railroad, whose railroad had, only a short time before, been found by an investigating committee to have three times as much capitalization as it had property, gave out an interview indorsing national corporation, and the reason he gave was that it was the only way the railroads could protect themselves from the demagogues in the legislature; and that is the argument given in the cities—that they must protect themselves from sandbaggers and demagogues; but the result is corruption, and the cities have been forced to take over their franchises for the protection of their people, not only the economic protection but the political protection.

Now, I said that unless our experience with the railroads was different, we would have to do the same thing for the same reasons, and the effort that is now being made to secure a revolutionary change and the effort made not in the interest of better regulation, but to avoid the regulation of the States, is simply an illustration of what I meant when I said the people would, for their own protection, be compelled to take these railroads over; and my opinion is that nothing would hasten the Government ownership of railroads more than the success of the plan which is under discussion. If you can ever secure national corporation—and that, of course, is of no value unless it is effective in transferring the control, for a national corporation that does not effect any change is not worth having; it is only valuable in proportion as it does bring this change in the centering of authority, but if this succeeds, I believe that the evils that will develop will become so intolerable that it will hasten the action; but, my friends, I never believe it wise to advocate a bad thing in the hope that it will bring a better thing. In fact, I think it is a very unsound philosophy. I think that if you oppose a thing, and it comes, you can then take advantage of it, and you may be able to use it to bring something that is better; but whenever I am tempted to advocate a bad thing, in the hope it will bring a better thing, I am restrained by this process of reasoning—rather, this illustration of reasoning.

I will put it this way: If I ever get it into my head that I can raise a man from the dead, I will try it on a dead man; I will not kill a man just to experiment with him; and I apply that to this case. While I believe that out of the abuses that this would lead to, Government ownership would come, I would not be willing—no matter how much I favored Government ownership—to favor the bad thing and take my chances on the good thing coming, because if I helped to get the bad thing, I would be responsible for it, and then, if I were not able to get the good thing, I would have no way of defending myself from a very serious responsibility. Now, personally I can not say that I desire Government ownership, because I lean to the individual idea rather than to the collective idea; that is, I believe that Government ownership is desirable only where competition is impossible. I am not able to tell you who first laid down the rule that I have adopted, but the first man whose name was attached to it was Prof. Ely; I do not know whether it was original with him or whether he took some one else's statement, but my understanding of it was this—I think he put it this way: That natural

monopoly must be owned by the people, on the theory that in the case of a natural monopoly competition was impossible, or, if not impossible, was so expensive as to amount to the same thing, and that there should be Government ownership.

That proposition expresses my views better than any I have been able to myself frame; that where competition is impossible, Government ownership is necessary; that a private monopoly is indefensible and intolerable, and I only favor government ownership on the condition that a proper regulation is impossible, and I have been frank to express the belief that it will be found impossible, simply because of the natural tendency of the men in charge of the railroad to make all they can out of it, without regard to the equities or to the rights of the people. But I am perfectly willing to give to private ownership a fair and complete trial, and I am willing to have all proper restrictions tried, so that when the people turn to Government ownership, they will turn with evidence either that it is impossible to devise restrictions, or because the railroads are able to prevent efficient restriction, and I have gone so far in my willingness to try effective regulation as to suggest this: that the railroad capitalization be reduced to an honest basis, and that then the railroads be allowed to earn a sufficient income to keep their stock at par, and, in addition to that, a sum to be put into a surplus, as a bank creates a surplus, from which the railroad could draw in bad years, to keep its dividend at a just and reasonable point.

Now, if I know the sentiment of the people, there is no desire among the masses to do injustice to the railroads, and I have not any doubt that any fair proposition that is just to both sides would be indorsed by the public, and I have such faith in the sense of justice and the fairness of the masses that I would not hesitate to indorse and appeal to them to indorse a proposition that would give absolute stability to railroad stock by permitting this accumulation of a reasonable surplus, out of which the dividends could be paid in any bad year, so that any man who bought a railroad stock could know that every year he would receive a return that paid the value of the money invested.

Now, just how this would be brought about is a matter of detail, and I would not be prepared to go into it, but that is the principle I would like to see—the stock of a railroad, as long as it is in private hands, made as substantial and as unvarying as the value of a Government bond.

I remember that in 1907 the stock of some of these railroads went down more than one-half in a year's time. Now, if legislation had reduced the value of that stock one-fourth of the amount that it fell without legislation, there would have been a great cry about injustice, and yet the railroad managers are permitted to water stock and sometimes to juggle the market, and thus do injustice to stockholders, without any seeming complaint, whereas if the Government did it there would be a great outcry against the unfairness of the Government.

So much in regard to the matter of rates; first, that the capitalization should be reduced to an honest basis, so that the railroads would represent the cost of reproducing, and I know of no other basis; everybody else is governed by that rule. A merchant's stock is only worth the cost of reproducing. The land that a farmer buys is not

determined by the amount of the mortgage on it; it is determined by the value of the crop and the value of the land around it, and it is only where the owner of the property has some special means of protecting himself from general laws and general rules that he can expect to preserve a value that is in excess of the cost of reproduction, and the way that the railroads do it is to exercise the privilege—I say privilege rather than right—the privilege of collecting rates sufficient to pay interest and dividends on the capital that they have. I believe the only just basis would be the cost of reproduction, and how that is to be ascertained or how it is to be reached is a matter that would require a good deal of discussion and investigation.

That is all on that point.

The CHAIRMAN. Are you through, Mr. Bryan?

Mr. BRYAN. Yes; unless there is something else suggested.

The CHAIRMAN. Mr. Bryan, you say that the capital stock of corporations should be reduced to a fair valuation of the properties?

Mr. BRYAN. Reduced on the supposition that it is now above.

The CHAIRMAN. Yes. You are aware that under existing law the National Government can not control stock issues, are you not?

Mr. BRYAN. That we have no law for it?

The CHAIRMAN. Yes; that we have no law for it. Do you think the National Government should pass a law controlling stock and bond issues?

Mr. BRYAN. I do.

The CHAIRMAN. Do you think that control should be exercised contemporaneously with a similar control by the respective States?

Mr. BRYAN. I see no conflict.

The CHAIRMAN. Suppose a State should come to one conclusion regarding the capitalization of a railroad incorporated in that State but operating in interstate commerce, and the National Government should come to a different conclusion, which would control?

Mr. BRYAN. I should say that each would control within its own borders.

The CHAIRMAN. You would say, then, that the State action would control as to purely State commerce?

Mr. BRYAN. I would say this, that the State's action would control in the State which acted, but that would not prevent the Federal Government from controlling outside of that State in interstate commerce, or any other State controlling within its own borders.

The CHAIRMAN. Well, then, you understand that the issue of stocks and bonds is a mathematical expression?

Mr. BRYAN. Yes.

The CHAIRMAN. So much stock and so much bonds. Now, if the National Government says that a stock and bond issue shall be a certain amount and the State says that that stock and bond issue shall be a different amount, which mandate shall the State corporation follow?

Mr. BRYAN. Well, I should say this, that the Federal Government can take the matter up the moment the corporation attempts to do business outside of the State of its origin, and can fix the conditions upon which that State corporation will be permitted to do interstate commerce, just as we have in the child-labor law. You know that the trust remedy that I have advocated for many years is based

upon that very power—that a State may create a corporation as it pleases, and be as lax as it will or as careful as it will, and as long as the corporation stays in the State the Federal Government has nothing to do with it, but the moment the corporation attempts to enter into interstate commerce, then the Federal Government is able to take charge and say on what terms it shall enter, and I not only believe in applying that doctrine to the railroads, but I believe in applying it to our large industrial corporations.

The CHAIRMAN. You realize that all State corporations engaged in railroading are also engaged in interstate commerce, do you not?

Mr. BRYAN. Well, nearly all.

The CHAIRMAN. Practically all?

Mr. BRYAN. Yes.

The CHAIRMAN. Now, then, with reference to the stock and bond issue of the State corporation engaged both in State and interstate commerce, where the regulating power of the State says that the stock and bond issue shall be one amount, and the National Government, acting for interstate commerce, says the stock and bond issue shall be another amount, how is that corporation to obey both mandates?

Mr. BRYAN. Well, if you will pardon me, your statement is not quite accurate, Senator. The State does not say it shall be a certain amount. It says it shall not be more. The State fixes the maximum and the Federal Government fixes the maximum, but if the Federal Government fixes a maximum lower than the State, it does not conflict with the State, because the State simply says that the higher maximum shall be possible, but not necessary.

The CHAIRMAN. Now, proceeding to the question of fair capitalization, you are aware that the National Government has passed a law for the valuation of railroads?

Mr. BRYAN. Yes.

The CHAIRMAN. Railroads engaged in interstate commerce, and that the process is now going on?

Mr. BRYAN. Yes, sir.

The CHAIRMAN. Now, assuming that a fair valuation is arrived at by that process, what would you regard as a fair return with a view to maintaining that valuation on the market?

Mr. BRYAN. I think it would be impossible to fix it in figures, but the principal is very easily ascertained. I would allow the market price of money to determine so that a margin of say from 1 to 10 per cent above the par value might be allowed; that whenever the dividend paid raised the value of the stock above 10 per cent it ought to be reduced. If the dividend paid reduced the value of the stock below 1 per cent it ought to be raised. I think it would be possible to simply state the principle that the dividends should be sufficient to keep that stock at a fair revenue and a reasonable margin to cover the fluctuations that you could not possibly calculate.

The CHAIRMAN. How about the surplus, this return for a surplus which is to guard the lean years and protect the stockholders; have you any views as to the amount of return which should be allowed for that purpose?

Mr. BRYAN. Nothing except a suggestion. It would be merely a matter of opinion. I should say tentatively 25 per cent, but when

I say 25 per cent I do not mean to say that I would favor that and nothing else.

The CHAIRMAN. You mean 25 per cent of the amount of the return—

Mr. BRYAN. The capital. No; I would say let the railroads—and I am just suggesting that by way of illustration—let the railroad collect enough in rates to pay the dividends and interest and in addition a certain amount that could be fixed that would go into the surplus until the surplus reached a certain sum and thereafter would cease until the surplus fell. To illustrate what I mean, suppose we took the dividend of 5 per cent and allowed the rates to be sufficient to collect a dividend of 5 per cent. and then suppose we allowed 2 per cent to be collected in addition, that would be put into this surplus until the surplus reached, say, 25 per cent.

The CHAIRMAN. Twenty-five per cent of the capital?

Mr. BRYAN. Of the capital. Then the 2 per cent would cease to be collectible until the surplus was reduced by being drawn on to pay dividends, and whenever it was reduced it would be again increased by the same process.

The CHAIRMAN. Now, regarding—

Mr. BRYAN. May I just add a suggestion before you proceed? Now, you spoke of the ascertaining of the value of the road. I think that is the first step. When we have ascertained the value we will know, then, what amount of water they have or what excess their capitalization contains. I believe that excess ought to be dealt with and removed from the basis of calculation, and when you come to that there are equities that ought to be considered. I would not be willing to say that as soon as you ascertain what the actual value of the road is that therefore you should, by law, wipe out all the rest, because there may be equities to be considered; but when you find out what that actual valuation is, I think that ought then to be represented by stocks and bonds, and thereafter no stocks and bonds should be allowed to be issued except under supervision and for actual money invested. Then this excess, which will be greater in some roads than in others, should be treated by itself, and that the investments should be upon some equitable basis. It might be fair, all things considered, that that amount should be divided between the stockholders and the general public. It might be wise for the general public to assume the payment of a certain amount of that excess, if it can be shown to have an equitable claim; but I think we ought to get to some basis and not have this quantity of water made as a continuing foundation upon which there should be a perpetual tax upon the public. I would rather have that set apart and settled upon an equitable basis, and after that the railroad problem, so far as the stockholders are concerned, would be very easy, and then, I think, we ought to have legislation that would prevent the exploitation of roads, not by their owners because the owners of roads do not exploit them.

The railroads are exploited by a group of men who use the power the stockholders give them, not for the benefit of the stockholders, but for the benefit of themselves. A railroad president drawing \$100,000 a year would have to serve 50 years in order to make \$5,000,000, and then on the assumption that he did not spend anything during that time. Now, nobody begrudges these railroad officials a fair return for their services, but when a president drawing

\$100,000 a year is permitted to buy over a railroad and then sell it to himself for five millions more than he paid for it he makes in one transaction as much as the railroad would pay him in 50 years, and the large fortunes, as I understand it, have not been made out of salaries; they have been made out of exploitation, and one of the common ways has been when a railroad is to be built—of course, we do not have so much building now, and it is not, therefore, so much used—but the way used to be for the railroad company to elect its directors and then the directors would form a construction company, and the construction company would then deal with itself and the railroads represented by those men would pay to those men all that the railroad had, and these men would get all the money that the railroad had by dealing with themselves.

Now, that has been the way in which a good deal of the exploitation has been done. Since that time we have had this other plan of buying a new road, as we have had some illustrations of it in the railroad life. The men in charge would buy a road and sell it to the corporation they controlled, and in that way they have made that money. I think we ought to have laws that will compel the railroad managers to do an honest business, and we have had an investigation in the last few years that has shown that railroads that stood among the very best in the country, backed by men that we recognized as our biggest financiers, have been guilty of things that would bring discredit upon an ordinary highway robber.

The CHAIRMAN. Would you have this legislation to prevent the exploitation of railroads, to which you refer, enacted by the Nation or the States?

Mr. BRYAN. I fall back upon my original proposition. I would have both. I would have the Nation do its part, but not deprive the States of their part; in other words, I believe that national remedies should be added to the State remedies and not subtracted. They can act concurrently within their respective jurisdictions.

The CHAIRMAN. With reference to the corporate organizations which are to operate in interstate transportation, with a view of meeting the demands of the Nation as well as the respective States in which they are located, do you regard this tendency toward the consolidation of State railroads into great national systems, under which one system will operate railroads in 3, 4, 5, 8, or 10 States, a beneficial one?

Mr. BRYAN. Well, I would not attempt to interfere except where competition was eliminated. That is, the mere extension of a line into new territory I would not regard as necessarily objectionable, and I would not care to say that a limit should be set to the length of a road or to the number of its branches, but—

The CHAIRMAN. Or to the number of States in which it runs?

Mr. BRYAN. That would follow from its length—but I do think that no permission should be given to take competing lines. To my mind competition is essential unless you would have Government ownership.

The CHAIRMAN. Now, taking into consideration the present 8 or 10 large systems of railroads, consolidating in their operation many miles of track, that belong to individual corporations, organized under the laws of the States, do you view any of these consolidations

which have been effected, so far as their operation is concerned, as prejudicial to the public interest?

Mr. BRYAN. I am not prepared, Senator, to point out a case and explain the operation of its management.

The CHAIRMAN. Are you aware of any general public complaint against any one of these consolidations, so far as the area of its operations is concerned?

Mr. BRYAN. No; I can not say that I know of any complaint based on area. Take the Pennsylvania and the Baltimore & Ohio. There was complaint based on the destruction of competition, and I think the same with regard to the Southern Pacific and Union Pacific—

The CHAIRMAN. Well, we have now in the East several great railway systems—the New York Central, embracing six or seven States, running as far as Chicago and perhaps beyond; the Pennsylvania Railway system; the Baltimore & Ohio Railway system; the Southern Railway system—all extending from the Atlantic coast to the Middle West. Do you know of any public complaint against the area in which those roads operate—as to the area, rather, in which those roads operate?

Mr. BRYAN. I am not prepared to say that there is any complaint, and I do not recall ever having heard an objection based upon area alone. I know in the case of the southern railroads there have been complaints based upon the combination that has eliminated competition.

The CHAIRMAN. And there are also complaints as to capitalization, but I am confining myself simply to area served.

Mr. BRYAN. I see your point.

The CHAIRMAN. I want to get at the question as to whether there is any public complaint against the size of the area of operations of these great systems.

Mr. BRYAN. I know of no complaint based merely on length or area. It has been based merely on the elimination of competition.

The CHAIRMAN. You are aware in each one of these districts consolidations have been effected of from two to five or six hundred individual roads by a gradual process, are you not?

Mr. BRYAN. I know that that process has gone on, but I am not sure that it has gone on in recent years as it did some time ago. Then, of course, that process may not at all interfere with competition—the extension of arms and branches may not affect the matter of competition.

The CHAIRMAN. Now, the statement was made some years ago, when I examined this matter thoroughly, that there were about 6,000 operating individual railroads in the country; that there were about 2,000 operating railways, and that the bulk of those operating railways had been through some process consolidated in their operation through the creation of great systems, some 10 in number, and this consolidation had gone so far that the entire trackage of these 10 systems amounted to about 200,000 miles of railway out of the 225,000 or 230,000 miles then existing.

Now, just simply from the economic standpoint, the question of service to the public, and disregarding the question of exaggerated stock issues and bond issues, do you regard that tendency as simply meeting the economic requirements of the times, or was it a mistake?

Mr. BRYAN. I think it would be difficult to answer that question intelligently without more information as to the details of each particular case than I have from your question.

The CHAIRMAN. Do you not think if it had violated the economic requirements of the time we would have heard from the public?

Mr. BRYAN. I think the public would not likely have complained, except as that consolidation deprives them of an effective competition.

The CHAIRMAN. I understand, and if it does not prevent an effective competition—

Mr. BRYAN. Competition, to my mind, is the test question.

The CHAIRMAN. You are aware that each one of these systems has main trunk lines and also branch lines extending out like the bones of a fish from the spinal column, and you are aware that as to each one of these systems, these branch lines stretch out into each others' territories, and in that way create a competition between the branch lines, are you not? Does not that constitute about as effective a method of competition as can be devised?

Mr. BRYAN. Well, I think that that makes competition effective, provided the railroads of which these are branches are not themselves in some combination by which they destroy it. You see, there are two ways of destroying competition; one is by the absorption of ownerships and the other is by the association of managers.

The CHAIRMAN. Yes; and your contention—

Mr. BRYAN. We have had some experience with both.

The CHAIRMAN. Your contention is that these great corporations, through intercorporate holdings, create practically a monopoly?

Mr. BRYAN. My contention is, and has been for many years, that there should be no interlocking directorates; that is, no man should be a director of two competing corporations.

The CHAIRMAN. You realize legislation has been enacted by the Nation—

Mr. BRYAN. I am very much gratified to know that it has.

The CHAIRMAN. Now, take the Southern Railway system, which operates in about 10 or 11 States, and which is competitive with the Atlantic Coast Line in part and with the Louisville & Nashville—

Mr. BRYAN. And the Seaboard?

The CHAIRMAN. And the Seaboard in part—there, as I understand it—there were many hundreds of small State railroad corporations that were organized into this great system.

Mr. BRYAN. I am not acquainted with the history of those.

The CHAIRMAN. I will state to you briefly their history. That consolidation or union of railroads was accomplished through the Richmond & Danville Railroad, organized under the laws of Virginia, and to which a very liberal charter was given by the State of Virginia without many restrictions as to stock and bond issues, without many of the restrictions which have since been regarded as necessary in both State and National legislation. And through the powers given to that Richmond & Danville Railroad of purchasing the stocks of other corporations and of leasing other corporations that railway, as I understand it, has come into the physical control of some 10,000 or 11,000 miles of railroad which had been operated previously by individual roads—some two or three or four hundred in number.

You will realize, now, that was done for the purpose of promoting interstate commerce.

Mr. BRYAN. I should say that was not the primary purpose.

The CHAIRMAN. No; not the primary purpose perhaps of the incorporators. Theirs was private, but it was possibly acquiesced in.

Mr. BRYAN. Yes; that may have been incidental.

The CHAIRMAN. Upon the assumption that it advanced the interest of interstate commerce. I now ask you whether you think it was wise, as a matter of public policy, to permit a single State to create the organization that was intended to promote the national purpose of interstate commerce and to frame the entire organization that was to operate that immense system in 11 States; whether it was wise public policy to permit a single State to legislate regarding a matter in which all these States were interested?

Mr. BRYAN. My answer is this, that it is not necessary to restrict the power of the State to incorporate to give the Federal Government power to regulate that corporation whenever it goes outside of the State that organizes it. No matter what the State of Virginia may say that a corporation can do, the Federal Government can say what it can do outside of the State of its origin when it engages in interstate commerce, and the Federal Government can be perfectly indifferent to the liberality, as you so call it, of State laws, because they do not bind the Federal Government, and these State laws do not command the railroads to do so-and-so, they merely permit, and when the Federal Government says, "We will not permit you to act up to the full authority of your State outside of your State" there is no conflict between it and the State, for the State does not exercise or attempt to exercise any authority. When it gives this power it simply gives its permission, and I can not see that any other State should respect this power to its own injury any more than it should allow a citizen traveling from Virginia to another State to do in the other State anything that is harmful. The State exercises the right to say what a citizen coming from Virginia or any other State shall do or can do, and the Federal Government exercises the authority. Take the sale of liquor. If a man goes from Virginia into West Virginia or into North Carolina and attempt to sell liquor the Government does not care where he came from, it says, "You can not do that." And so when a State says that a corporation organized within its limits and under its laws can do so-and-so, it does not interfere in the least with the right of any other State to say it can not do it within its jurisdiction or the right of the Federal Government to say it shall not do it anywhere outside of its own State. I can not see that there is any conflict.

The CHAIRMAN. Regarding the question of capitalization, we will assume that the Richmond & Danville Railroad, which changed its name to the Southern Railroad system, was organized for the purpose of promoting interstate commerce in 11 States, and that each one of those States has a different view as to the rule which should govern the issue of stocks and bonds, and that each should declare that no corporation organized in another State should operate in that State save upon complying with its requirements as to stock and bond issues. That would be a condition which would absolutely prevent, would it not, the meeting of the economic requirements of that section by unifying these railroads?

Mr. BRYAN. My answer would be this, that the people of the State are more interested in their own welfare than any people outside, and they would not do anything that would hurt themselves, and if they do a thing, you may rest assured that it is done on the theory that they are helping themselves, they are protecting themselves. And I can not see, Mr. Senator, why a corporation, organized in another State or organized even under the Federal Government, if you succeeded in securing such a change, should be permitted to do in a State what an individual is not permitted to do in a State. That is, I do not see why a man-made corporation should have rights higher than the God-made man.

The CHAIRMAN. Mr. Bryan, I do not like to trespass on the time of the other members of the committee, and I think I have occupied your time long enough.

Mr. BRYAN. At what time do you adjourn?

The CHAIRMAN. We adjourn at 12 o'clock.

Senator CUMMINS. Before Judge Adamson interrogates Mr. Bryan I have a suggestion to make.

The CHAIRMAN. Certainly; we shall be glad to hear it.

Senator CUMMINS. I agree with so many of the observations made by Mr. Bryan and with so much of his reasoning, and the people of this country have so great confidence in his opinion, that I think each member of the committee ought to have an opportunity to develop this subject a little further. At least I feel that way, and I hope that the chairman can make an arrangement with Mr. Bryan at some future time to resume this inquiry so that all of us will have a chance to go further into this very important matter.

The CHAIRMAN. Would the committee be disposed to go on this afternoon at half past 1?

Mr. ADAMSON. No, sir; the House is in session, and I have never yet been smart enough to be in two places and do two things at the same time.

Mr. BRYAN. I am compelled to leave here at 4 o'clock.

Mr. ADAMSON. I shall join with Senator Cummins in inviting Mr. Bryan to return here at a future day and allow us all to examine him.

Mr. BRYAN. I can now fix the 16th day of January as a day that I could use for that purpose.

Mr. ADAMSON. We are not empowered to trade that far ahead yet, because this committee expires on the 1st of January, unless we secure an extension.

The CHAIRMAN. I will endeavor to fix a time that will be convenient.

Mr. BRYAN. Of course, gentlemen, anything that you require of me will take precedence over anything that I have arranged for myself.

Mr. ADAMSON. I move that the chairman arrange with Mr. Bryan to return at some convenient day to resume this discussion.

The CHAIRMAN. Without objection, that motion will be adopted.

Mr. ADAMSON. Has the chairman completed his examination?

The CHAIRMAN. I should like to ask another question. I stopped because of delicacy. I thought I was taking too much of the time of the committee.

Mr. BRYAN. So far as I am concerned, I could remain here, say, until 1 o'clock, if it suited your convenience; but I could not remain after that hour.

Mr. ADAMSON. There are just two or three questions suggested by your questions, Mr. Chairman, which I will ask, if you will allow me.

The CHAIRMAN. I will ask one or two other questions, if you please.

Mr. Bryan, you are aware that with reference to the national banks, which serve national purposes regarding our fiscal affairs and which also serve interstate commerce in providing for interstate and foreign exchange, that we have organized national incorporations. Would that not suggest that in the exercise of the national power with reference to transportation that we should organize national incorporations?

Mr. BRYAN. To my mind it raises neither necessity nor suggestion. In the first place the national bank was created as a war measure. The primary purpose was to secure a market for bonds. That purpose no longer exists, but the bank has been found to serve a commercial purpose; but the bank is amenable to the laws of the State; and then remember that it is no such institution as the railroads. For instance, the income of all the banks is relatively small compared with the income of the railroads. The employees of all the banks is small in number compared with the number of employees of the railroads, so there is neither the original necessity nor a parallel use that would suggest the following of that example. My own opinion is that the necessity for the national banks, as it now exists, is possibly overestimated.

The CHAIRMAN. But would you favor a reorganization of the national bank system and the restoration of the State bank system?

Mr. BRYAN. I would not say that it was necessary because the evils, such as there may be, are insignificant, in my judgment, compared with the evils that would follow from the change which is proposed in regard to railroads, and then you have an existing institution created for the purpose, but an institution to which society has adjusted itself, so that the abolition of the bank would compel a readjustment. The surrender of State authority over railroads and the exercise of exclusive authority by the Federal Government would compel a readjustment, so that in one case the readjustment is an argument against the change back, and in the other case it is an argument against the change proposed.

The CHAIRMAN. You spoke of the necessities of war warranting the organization of the national banks. Do you take into view the fact that in the future the adaptation of the railroads of the country to our national requirements for national defense—do you take that as an essential?

Mr. BRYAN. I see no reason why we need change our present methods to give the Federal Government any authority it needs. I think the plan proposed by the President, of authorizing the taking over of the railroads in cases—

The CHAIRMAN. In cases of necessity?

Mr. BRYAN. Yes, sir; would meet that emergency.

The CHAIRMAN. That would mean that for that purpose the National Government would practically operate all the railroads, or could operate all the railroads?

Mr. BRYAN. Only to the extent that it was necessary, but that might be a very limited extent and for a limited time. And then that is a contingency that really I am less disturbed about than some others.

The CHAIRMAN. You realize the fact, do you not, that while for many years there was great complaint about our national bank system, and particularly about the money control of the country, that complaint has been largely done away with by legislation enacted by the National Government, has it not?

Mr. BRYAN. I think the creation of this reserve system, with its twelve financial centers, and its central board, has very much relieved the public from the control that was exercised through the banks, not necessarily by them.

The CHAIRMAN. Does not that diminish, to some degree, your lack of faith in the ability of the national representatives to meet the requirements of the hour with reference to restrictive and controlling legislation as to these great national instrumentalities?

Mr. BRYAN. Not when I remember the difficulty we had in getting the law passed and the effort made to undo it.

The CHAIRMAN. Do you not think that in the matter of the regulation of transportation the States, acting as a unit through the National Government—

Mr. BRYAN. That the what?

The CHAIRMAN. That the States, acting as a unit through the National Government, have been able to do more in the way of properly regulating the railways of the country than the respective States have been able to do?

Mr. BRYAN. I can not agree with you on any evidence that I know of; but I shall be glad to consider any evidence that you have in support of that proposition.

The CHAIRMAN. I had the impression that that was self-evident.

Mr. BRYAN. That is not my view.

The CHAIRMAN. That while some of the States—very few—have reached a very perfect system of regulation and control, that has not been the case with most of them.

Mr. BRYAN. I think on that point I might suggest—

The CHAIRMAN. And that they have been very slow, in my judgment, in meeting the requirements of the situation.

Mr. BRYAN. Not so slow as the Federal Government. And, besides, where you have a number of States acting separately there is opportunity for the trying of remedies that will enable us to experiment and profit by experiment, and a successful experiment tried in one State is apt to be adopted in another; but where you have just the one legislative body acting there is no other body from which it can receive either the impulse that comes from rivalry or the benefits of experience.

The CHAIRMAN. You are aware that in the suggestions regarding national incorporation it is not proposed to relieve those corporations from the police laws of the State or from the taxing powers of the State?

Mr. BRYAN. Yes.

The CHAIRMAN. You are aware of that?

Mr. BRYAN. Yes.

The CHAIRMAN. And you are aware also that they all involve the most careful control of capitalization of the stock and bond issues?

Mr. BRYAN. But I think everything that is good in the proposed measure can be secured entirely independently of the proposed change.

The CHAIRMAN. I see.

Mr. BRYAN. That is, that you can add, through the Federal Government, any regulation that is desirable and any that would be included in the plan without the adoption of the plan at all.

The CHAIRMAN. That is all, Mr. Bryan.

Mr. ADAMSON. Mr. Bryan, while you may be aware of Chairman Newlands's theory about what ought to be done, how could you possibly be aware of what would be the final outcome of legislation if we should enter on this project?

Mr. BRYAN. No one can predict with any certainty in regard to legislation.

Mr. ADAMSON. The influences which could secure this movement at all might frame the legislation?

Mr. BRYAN. My fear is that the temptations that would come with the change would be difficult to resist—that is, the temptation would come to the railroads to exercise an undue influence.

Mr. ADAMSON. Whatever general advantages may be claimed for large consolidations of these local corporations—might those advantages be largely offset if local interests and convenience were ignored through the management by people far removed from the communities?

Mr. BRYAN. Yes. They may not only be overcome, but I think there is a principle there that we can not ignore, and that is that where you transfer from the locality to some remote place the controlling power, in proportion as it is removed, it is less amenable to local opinion, and that is one of the objections to the consolidation that has gone on under the trust system.

Mr. ADAMSON. You answered Chairman Newlands's question about the ramifications of these great systems going into the vicinity one of another and competing. I will ask you, while you say you have heard no great general complaint, except as to competition, if you have not observed the practice of great and profound courtesy by one railroad combination as to another with regard to invading its territory?

Mr. BRYAN. I think there has sometimes been a courtesy that could not be entirely explained by the ordinary standards of life.

Mr. ADAMSON. On the subject of the necessity for this regulation, my railway friends do not conceal that they are embarrassed in two particulars: One is that they have too many restrictions on their operation and too many restrictions on the securing and use of capital. That is their whole complaint. Now, they say, in elaboration, that they have not the power to control either their expenditures or their earnings. I will ask you if under the condition of society where we have relinquished part of our national liberty in consideration of securing other great benefits from society—if that is not true of every person and corporation in this country?

Mr. BRYAN. Yes; but in the case of the corporation there is a reason for restriction that does not exist with the individual.

Mr. ADAMSON. You mean a greater reason?

Mr. BRYAN. Yes.

Mr. ADAMSON. An additional reason?

Mr. BRYAN. Yes; because the corporation has no rights except those conferred by law, while the individual has natural rights.

Mr. ADAMSON. They further state that the Government has dealt with them solely with a policy of restriction and punishment. I want first to ask you a few questions to see if I can develop that they are entirely in error about that. You remember the desperate conditions existing when we undertook to regulate the railroads—and you were correct in saying that the States first started it. The Government, prodded to it or induced to it by the representatives from the States, finally made an effort; then the railroads resisted it until the Supreme Court set aside enough of it to emasculate it; and you correctly say that, in spite of and notwithstanding your position, we succeeded, after 12 or 15 years, in putting some life back into it. I want to ask you what particular thing the Government has put upon them—what restrictive thing the Government has put upon the operation of railroads that is any more severe than it is on any other business in society? For instance, we established a rule that every rate and practice shall be just and reasonable. Is that any more than is required of other people by the Government—that their conduct shall be just and reasonable? Is that an unreasonable rule, for the railroads to complain of?

Mr. BRYAN. I do not regard it as a reason for complaint.

Mr. ADAMSON. Then, we adopted the Elkins law, forbidding discriminations and rebates; we had something in the original law about discriminations. Is there anything wrong in saying to the men who are operating these great corporations that they shall not give one man in one community a preference over another?

Mr. BRYAN. My recollection is that it was stated at the time the Elkins law was drawn by the representatives of the railroads that the complaint was that as long as one system granted rebates the other had to, and that it was a disadvantage to the railroad to give rebates, and that the Elkins law really protected the railroads from each other.

Mr. ADAMSON. Then we have provided, in the interest of public safety, certain requirements and restrictions. Do you think there is anything wrong or harsh in that?

Mr. BRYAN. Speaking generally, I am not able to point out any restriction that I regard as unjust.

Mr. ADAMSON. I shall not enumerate all of these to you, but all of them have been prohibitions against the conduct not of good men but of bad men—wrongs, crimes per se, or malum in se or malum prohibitum. These restrictions are directed to the conduct of the men, and not against the railroads; and how can a good man who wants to do right and administer the affairs of a railroad properly, justly object to these restrictions and prohibitions any more than you can, as a citizen of this country object to the prohibitions against bad men committing lawless acts?

Mr. BRYAN. I think your reasoning is sound, Congressman, and I have long believed that our laws should put the penalty upon the individual and not upon the corporation.

Mr. ADAMSON. Do you believe that the railroads are correct in there apprehension that the people have a prejudice against them? Do you not think that the people love and admire the railroads, and desire that the railroad officials should do right, as other people?

Mr. BRYAN. You state it a little stronger than I would.

Mr. ADAMSON. What is your statement?

Mr. BRYAN. When you speak of the love for these men.

Mr. ADAMSON. Railroads.

Mr. BRYAN. I mean loving the railroad officials.

Mr. ADAMSON. No; the railroads, I say, and the good officials.

Mr. BRYAN. Yes. I think in an impersonal way they love the railroads, but that they separate some of the railroads officials from the railroad that they love when they attempt to display their affections.

Mr. ADAMSON. They love the good ones and try to correct the bad ones.

Mr. BRYAN. They are interested in legislation that will permit the investment of all the capital necessary, and the earning of all the dividends necessary, and the fact that they have an interest in not doing injustice to the railroads is the protection of the railroad against injustice, if it will only go to the people and fairly lay its case before them; but as long as the railroad keeps an "oil room" and spends its time trying to corrupt the men sent there by the people to regulate the railroad it is apt to raise a suspicion as to the good intent of the railroad.

Mr. ADAMSON. Then the misconduct and mismanagement of the bad railroad officials has contributed to create the very demagogue of whom they complain?

Mr. BRYAN. Yes; but you can not always tell who are the bad officials and which is the bad railroad until after a thorough investigation.

Mr. ADAMSON. Mr. Chairman, I will be compelled to go to the House. I can not go on. I move we adjourn.

(The motion was agreed to.)

The CHAIRMAN. The committee will take a recess until Saturday at 10 o'clock.

(Whereupon, at 12 o'clock noon, the committee took a recess until Saturday, December 9, 1916, at 10 o'clock a. m.)

# INTERSTATE AND FOREIGN TRANSPORTATION.

SATURDAY, DECEMBER 9, 1916.

UNITED STATES SENATE,  
JOINT SUBCOMMITTEE ON INTERSTATE COMMERCE,  
ROOM 326, SENATE OFFICE BUILDING,  
Washington, D. C.

The joint subcommittee met at 10 o'clock a. m., pursuant to adjournment, Senator Francis G. Newlands presiding; also Vice Chairman William C. Adamson.

## ORDER OF PROCEDURE.

The CHAIRMAN. The committee will come to order. I will state that the committee has determined to hear Mr. Thelen to a conclusion, and Mr. Brookhart upon the subject of Government ownership, postponing the cross-examination of both until some time in the future. Mr. Cowan, on behalf of the shippers, will present a written statement on their behalf within the next few days, which will be inserted in the record.

As the committee will doubtless desire to fully consider a coordinated rail, river, and ocean transportation, I desire to insert in the record for the consideration of the committee, and for the examination of those who appear before us to testify regarding interstate commerce, certain matter regarding a measure which I have been urging for the last 10 years, generally known as the Newlands river regulation bill, intended to promote the improvement and development of the rivers of the country in the interest of interstate commerce, and in this connection to secure the development and control of our water resources for every useful purpose, including the reclamation of arid and swamp lands, the development of water power, and other beneficial uses, thus making the waters of the country the creators instead of the destroyers of wealth. I shall insert in the record extracts of a speech on this subject made by me on the 17th of December, 1907, also an article appearing in the annals of the American Academy of Political and Social Science of January, 1908.

(The matter referred to is as follows:)

## THE INLAND WATERWAYS—A LEGISLATIVE PLAN FOR THEIR IMPROVEMENT—THE COORDINATION OF RAIL AND WATER TRANSPORTATION.

"The Inland Waterways Commission is now engaged in framing a preliminary report to the President, but it has not yet reached a final conclusion. I wish to say, as a member of that commission, that I simply express here my individual views. I have introduced in the Senate a bill (S. 500) providing for the appointment of an inland waterway commission for the development of the

inland waterways of the country, purely in a tentative way. I invite suggestion, criticism, and amendment, so that the commission may have the advantage of the consideration of this question by members of both bodies of Congress and by the country at large before it reaches a final conclusion. \* \* \*

"I have also recently introduced a bill (S. 499) which in most particulars is identical with the bill introduced by me over two years ago for the national incorporation of rail, river, and ocean carriers. I shall insert a copy in these remarks in the hope that it will be carefully considered in connection with the development of our waterways. I invite also as to this bill the criticism, suggestion, and amendment which I have invited regarding Senate bill No. 500."

[Speech of Hon. Francis G. Newlands, of Nevada, in the Senate of the United States, Tuesday, Dec. 17, 1907.]

**Mr. NEWLANDS.** Mr. President, I desire to present my views regarding a bill which I introduced a few days since and which reads as follows:

#### THE INLAND WATERWAY COMMISSION BILL.

A bill (S. 500) providing for the appointment of an inland waterway commission and for the improvement and development of the inland waterways of the country, with a view to the promotion of transportation between the States and with foreign countries.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That a special fund shall be established in the Treasury, to be known as the "inland waterway fund," to be used in the examination and survey for and the development of the inland waterways of the country; and the sum of \$50,000,000 is hereby reserved, set aside, and appropriated as such fund.

SEC. 2. That the President of the United States is hereby authorized to cause to be made examinations and surveys for the development of the inland waterways of the country, including the Great Lakes, the Mississippi River and its tributaries, the navigable rivers of the Gulf of Mexico and their tributaries, the navigable rivers of the Atlantic coast and their tributaries, the navigable rivers of the Pacific coast and their tributaries, and for the connection of such rivers with each other, wherever practicable and desirable, by connecting canals and by coastal canals, with a view to the promotion of transportation between such rivers by vessels of a standard draft; and to investigate all questions relating to the development and improvement of the inland waterways of the country, with a view to the promotion of transportation; and to consider and coordinate the questions of irrigation, swamp-land reclamation, clarification of streams, utilization of water power, prevention of soil waste, protection of forests, regulation of flow, control of floods, transfer facilities and sites and the regulation and control thereof, and such other questions regarding waterways as are related to the development of rivers, lakes, and canals for the purposes of commerce.

SEC. 3. That in order to enable the President to make such examinations, surveys, and investigations and to construct the works provided for by this act he is authorized to appoint an inland waterways commission, to be composed of \_\_\_\_\_ members, and to bring in coordination therewith the Corps of Engineers of the Army, the Bureau of Soils, the Forest Service, the Bureau of Corporations, the Reclamation Service, and other branches of the public service related to waterways, and to appoint such experts and other persons and create such board or boards in connection therewith as the work may require, and to fix the salaries of all commissioners, experts, and other persons employed under this act until the same have been fixed by Congress, the official salary of any official appointed or employed under this act to be deducted from the amount of salary or compensation fixed under the terms of this act.

SEC. 4. That such commission shall make to the President annually, and at such other periods as may be required either by law or by the order of the President, full and complete reports of all their acts and doings and of all the moneys received and expended in the construction of works and in the performance of their duties in connection therewith, which reports shall be by the President transmitted to Congress; and such commission shall furthermore give to either House of Congress such information as may at any time be required either by act of Congress or by order of either House of Congress.

The President shall cause to be provided for the use of the commissioners and other employees under this act such offices as may, with the suitable equipment

of the same, be necessary and proper in his discretion for the proper discharge of their duties.

SEC. 5. That if after such examination, survey, and estimate such commission shall determine that any project for the improvement or construction of an inland waterway or coastal waterway is practicable and desirable, it may, with the approval of the President and through the appropriate service, construct or execute, or cause to be let, contracts for the construction or execution of the same, in such portions or sections as it may be practicable to construct and execute as parts of the whole project: *Provided*, That the necessary moneys therefor are available in the inland waterway fund.

SEC. 6. That such projects may include such collateral works for the irrigation of arid lands, for the reclamation of swamp lands, for the conservation or replacement of forests, for the clarification of streams, and for the utilization of water power as may be deemed advisable in connection with the development of a channel for navigation or as aiding in a compensatory way in the diminution of the cost of such project.

SEC. 7. That such commission is authorized, with the approval of the President, to enter into cooperation with States, municipalities, communities, corporations, and individuals in such collateral works, and to make arrangements for the proportionate payment of the cost thereof out of the inland waterway fund and by the States, municipalities, communities, corporations, and individuals benefited thereby, in such manner as to secure an equitable distribution of the costs and benefits: *Provided*, That the cost of such collateral works shall be paid, if practicable, out of funds provided therefor by Congress, but if sufficient provision therefor is not specially made by Congress, such commission is authorized to pay for the same out of the inland waterway fund, but the total payments made on account of such collateral works from such inland waterway fund shall not exceed ten per centum thereof, and provision shall be made, as far as practicable, for the reimbursement to such fund of such payments by the States, municipalities, communities, corporations, or individuals benefited thereby: *And provided also*, That the inland waterways developed shall remain free for all the uses of navigation.

SEC. 8. That such commission shall make, with the approval of the President, rules and regulations governing the cooperation and compensation to the fund, wherever practicable, by the conveyance of reclamation rights, the lease of water power, and such other means as may be beneficial to the United States and the several States, municipalities, communities, corporations and individuals entering into such cooperation.

SEC. 9. That in carrying out the provisions of this act regard must be had, as far as practicable, to the equitable apportionment and contemporaneous execution of the projects contemplated under this act among the several waterway systems of the country.

SEC. 10. That the President is authorized, whenever the inland waterway fund is reduced below \$20,000,000, to make up the deficiency in such fund by the issue and sale of bonds in such amount and for such time as he shall deem advisable, bearing interest at a rate not exceeding — per cent per annum; but the amount of bonds issued shall not at any time exceed the difference between the cash on hand in such fund and \$50,000,000.

Mr. NEWLANDS. Mr. President, the agitation for a deep waterway from St. Louis to the Gulf and from the Lakes to the Gulf has reached such proportions as to create a general demand from every section of the country that a broad and comprehensive plan should be inaugurated for the improvement of all the navigable waterways of the country, and that legislation should be adopted creating a fund for continuous and uninterrupted work, securing a fair apportionment of the work between the different sections of the country, and providing for a businesslike administration with reference both to examination and construction.

The President, realizing this demand, determined to investigate the matter, with a view to recommending to Congress such a broad and comprehensive plan: and as a step in that direction appointed the Inland Waterway Commission to look into the various questions

relating to the inland waterways and their full economic development, and to report to him, with the expectation that, if their recommendation was approved by him, it would be submitted to Congress for its action. The commission has been in frequent sessions since April last. It has visited nearly every section of the country. Several members of the commission visited the Pacific coast and inspected the Sacramento, the San Joaquin, and the Columbia Rivers. The entire commission took a tour of the Great Lakes, and also made a trip from St. Paul to the Gulf upon the Mississippi River. Subsequently a majority of the commission made an examination of the Missouri River.

#### WATERWAY CONVENTIONS.

In addition to this the commission has been represented at various conferences and conventions which have been held throughout the country from the Pacific to the Atlantic and from the Lakes to the Gulf upon this important question.

The general interest which the country is showing in the improvement of waterways is manifest in the organization of various river-improvement associations in all parts of the country, and in meetings of these and other associations, the principal object of which is to consider waterway improvement. I shall enumerate some of these.

At Sacramento, Cal., last September was held the National Irrigation Congress, which was turned almost entirely into a discussion of waterways. Delegates were present from all the States west of the Mississippi and from States east of the Mississippi River. The total attendance was about 2,000.

The first week in October witnessed the most imposing pageant in the history of the Mississippi River. The trip of the President down the Mississippi from Keokuk to Memphis, together with governors from 19 States, Congressmen, and citizens representing the whole Mississippi Valley, made the Deep Waterways Convention at Memphis one that will be significant in the history of the Nation. Three thousand delegates were present, besides citizens representing a large number of States.

At Moline, Ill., in October, was held the Upper Mississippi Improvement Convention, at which there were present delegates from five States, reaching the number between four and five hundred.

At Sterling, Ill., in October, was celebrated the opening of the Hennepin Canal, with the governor of Illinois and representatives of four or five States present, and a general attendance of thousands.

In October the Trans-Mississippi Congress at Muscogee was chiefly devoted to the waterway improvement question, and was the largest and most enthusiastic assemblage in the history of that body.

Then came the Atlantic Deeper Waterways Convention at Philadelphia, with a representation of 15 States and a great and enthusiastic discussion of the improvement of waterways along the Atlantic coast.

At Victoria, Tex., in September, was held a waterway convention, whose special object was a discussion of the improvement of the western Gulf interpassage and the development of Texas rivers as tributaries to it.

At Birmingham, Ala., in October, was held a meeting of a waterway improvement association, at which two projects were discussed—the eastern Gulf interpassage movement and the Atlantic western project.

The National Drainage Congress, at Baltimore, in November, was devoted largely to a discussion of waterway improvement.

The Ohio Valley Improvement Association met at Wheeling in October and discussed the improvement of the Ohio River.

A waterway improvement association met at Grants Pass, Oreg., in September, with a representation of three or four States. There have also been other meetings in Oregon and Washington, and in the State of Montana a waterway improvement association has been formed.

In January the Missouri Development Association, devoted to waterways improvement, will meet.

These indicate, as I have said, the deep and general interest that the people in various parts of the country are taking in the improvement of waterways.

The Inland Waterways Commission is now engaged in framing a preliminary report to the President, but it has not yet reached a final conclusion. I wish to say, as a member of that commission, that I simply express here my individual views and that I have introduced in the Senate a bill (S. 500) providing for the appointment of an inland waterway commission for the development of the inland waterways of the country, purely in a tentative way. I invite suggestion, criticism, and amendment, so that the commission may have the advantage of the consideration of this question by Members of both bodies of Congress and by the country at large before it reaches a final conclusion.

#### GOVERNMENT WORKS.

In the past, Mr. President, it has been the general view of the country that the Government was unable to do constructive work; that it was unable to do such work efficiently; that it was unable to do it economically; that it was unable to do it quickly. The experience of the country within the past few years with two great systems of constructive work has proved the contrary and has proved that the Government is able to do its own work.

Mr. BEVERIDGE. I will ask the Senator what are the two examples to which he refers?

Mr. NEWLANDS. Those two exceptions are the construction of the Panama Canal and the work of the Reclamation Service. For the work of the Panama Canal service \$75,000,000 has already been appropriated, of which about \$39,000,000, I believe, has already been spent. The Reclamation Service has a fund of about \$39,000,000, a very large proportion of which has already been spent on about twenty-three different projects in fourteen or fifteen different States and Territories. I will not enlarge upon the work of either one of these services. It is sufficient to say that the country is satisfied with the work of both. So far as the region which I represent is concerned—the arid and semiarid region—there is a feeling of universal satisfaction with the energetic and efficient work and the thoroughly organized work that has been done by the Reclamation Service.

Now, Mr. President, in shaping this bill I have endeavored to unite the best features of both those bills.

Mr. BEVERIDGE. Mr. President—

The VICE PRESIDENT. Does the Senator from Nevada yield to the Senator from Indiana?

Mr. NEWLANDS. If the Senator will permit me a moment further—

Mr. BEVERIDGE. I am profoundly interested in what the Senator is saying on this whole great plan, and I think the Senator might enlarge there upon the fact that the Reclamation Service and the Panama Canal, as enterprises, are conducted also by officers of the Government, and in the case of the Panama Canal it finally came down to the most efficient work by the officers of the Regular Army. Those two instances I call to the Senator's attention, so that he might put them into his speech. They, however, are not the only ones. There is the telegraph service in Alaska, covering 8,000 miles or more, and other things of that kind.

I ventured to interrupt the Senator for the purpose of directing his attention more particularly to those facts.

Mr. NEWLANDS. I am very glad to receive the suggestion of the Senator from Indiana. It is true, as he says, that both of these services are being conducted by officers of the Government.

Mr. GALLINGER. Mr. President—

The VICE PRESIDENT. Does the Senator from Nevada yield to the Senator from New Hampshire?

Mr. NEWLANDS. Certainly.

Mr. GALLINGER. The Senator suggested very properly that, so far as the Reclamation Service is concerned, the section of country from which he comes—the arid and semiarid region—is well satisfied with what has been done. I come from a section of country, Mr. President, which is neither arid nor semiarid, but I have been a very warm friend of the irrigation project, and I will ask the Senator now, for my personal information, if he can tell me what extent of territory, in acreage or otherwise, has been reclaimed up to the present time? Possibly the Senator has the information, possibly he has not.

Mr. NEWLANDS. I am unable to state just now what number of acres have been reclaimed. Many of these works are yet unfinished.

Mr. GALLINGER. Is any one of them completed?

Mr. NEWLANDS. Yes; in Idaho, in my own State, and in other States.

Mr. President, I have endeavored to take the best features of both the Panama Canal act and the reclamation act in shaping this tentative measure which I present for your consideration.

#### THE INLAND WATERWAY FUND.

In the first place, the bill which I have drawn provides for an inland waterway fund of \$50,000,000 and appropriates and sets aside in the Treasury \$50,000,000 for that work. It also provides that whenever, as a result of the work and expenditure, the amount in the fund falls below \$20,000,000 the President of the United States, unless the fund is made full by legislative appropriation, shall issue bonds for the deficiency, thus giving him power at any time to issue bonds

for the difference between \$20,000,000 and \$50,000,000. The purpose of this is to maintain continuous and uninterrupted work, so that this work shall not be conducted in the disjointed manner in which it has been conducted in the past.

Mr. HEYBURN. Mr. President—

The VICE PRESIDENT. Does the Senator from Nevada yield to the Senator from Idaho?

Mr. NEWLANDS. Certainly.

Mr. HEYBURN. I desire some information, which I expect the Senator can give me. The suggestion has come to me from many quarters that the Government should set aside—that is the term used—\$50,000,000 for this work; but I have been unable to understand just what was meant by setting aside \$50,000,000. Is it to be understood that an appropriation to that extent is favored in one lump sum and that \$50,000,000 should be withdrawn from the general purposes of the Government to await its expenditure in the Treasury, idle, or that \$50,000,000 should be made available from time to time as the necessities of the work may require? It is to that subject I would direct the Senator's attention and inquire as to just what the plan is with reference to the disposition to be made of this sum of \$50,000,000 pending the performance of the work or the organization of it.

Mr. NEWLANDS. The bill which I have drawn, and which represents merely by individual views, provides this inland waterway fund, sets it apart in the Treasury, and forever dedicates it to this work, so that that money can not be used for any other purpose.

Mr. HEYBURN. Then I understand that so much of this money would remain idle as was not expended until the entire system had been worked out and the \$50,000,000 expended; that is, if we should only expend \$10,000,000 of it in the next five years, the forty millions would remain idle in the Treasury of the United States. Is that the purpose of the bill?

Mr. NEWLANDS. That is my purpose in providing for this fund so that this fund can not be disturbed in any way and it is forever dedicated to this purpose.

I wish to provide the Inland Waterways Commission that is to do this work with capital for the purpose, and I wish it to handle this capital just as a board of directors of a great constructive corporation would do without being hampered by Congressional restrictions appropriating a certain sum to this detail and another sum to that. I would give it the right to adjust and to readjust its plans, estimates, and expenditures according to varying conditions, and to finance the work with a view to cooperation with and contributions from States, municipalities, communities, corporations, and individuals benefited by it. I hope to see a commission that will do work, not one whose chief business will be to hang about the committee rooms of Congress. I hope to see a commission of experts that will have the power to initiate both investigation and construction and with ample funds to complete its projects, not a commission that will have to wait upon the tardy initiative of Congress as to projects the details of which it is incapable of dealing with.

I will answer the Senator by saying that if we only contemplate spending \$10,000,000 within the next five years, it is best for us not

to commence the work at all. My expectation is that we will expend at least \$50,000,000 a year for the next five years, perhaps even during the first year.

Mr. BEVERIDGE. The Senator does not mean that?

Mr. NEWLANDS. I do.

Mr. BEVERIDGE. Expend \$50,000,000 every year?

Mr. NEWLANDS. I do.

Mr. BEVERIDGE. That would be a matter for discussion; but perhaps the Senator is right.

Mr. NEWLANDS. That is what I shall urge. That is my individual view. My individual view is that within the next 10 years the United States should expend at least \$500,000,000 in the improvement of its inland waterways; that we ought to enter upon this work contemporaneously in every section of the country; that we should enter upon the work of the rivers of the Pacific coast, upon the rivers of the Atlantic coast, upon the Gulf coast, and upon the Mississippi River and its tributaries, and upon the coastal canals or sheltered waterways which will connect the rivers of the Gulf and Atlantic coast from Texas to Maine. All these works should be commenced and prosecuted contemporaneously. I wish to say further that that is the sentiment of the people of the United States, and Congress will, I have no doubt, accommodate itself to that view of the great public.

#### CONSTITUTIONAL POWER.

Mr. TELLER. Mr. President—

The VICE PRESIDENT. Does the Senator from Nevada yield to the Senator from Colorado?

Mr. NEWLANDS. Certainly.

Mr. TELLER. I want to ask the Senator a question as to the bill. Section 6 provides, among other things, for such utilization of water power as may be deemed advisable in connection with the development of a channel for navigation, etc. Does the Senator understand that the General Government has the right to control the waters of the rivers of the States beyond what is necessary for navigation? In other words, does the Senator understand that the Government of the United States can establish water powers inside of the State and use the water? I should like to know what the Senator understands that to mean.

Mr. NEWLANDS. The Senator rather anticipates the order of my argument, but I shall be very glad to answer the question the Senator asks and propose to take up that question later on.

Mr. TELLER. Then I will not interfere with the Senator if he prefers to go on in his own way.

Mr. NEWLANDS. I will answer now if the Senator prefers.

Mr. TELLER. Very well.

Mr. NEWLANDS. This bill contemplates the coordination of all the related uses of water and the coordination of all the various services of the Government that have anything to do with water, such as the Engineer Corps of the Army, the Reclamation Service, the Forestry Service, the Bureau of Soils, the Geological Survey, and expects to make them all efficient in developing the highest use of the waters of the country, not only for navigation, but for all the related uses. And in this connection it provides for the cooperation of the Nation

with States, communities, corporations, or individuals, where such cooperation is necessary in securing the most beneficial use of the waters for all purposes.

Now, I come to the question of the Senator from Colorado. The Senator asks me whether I think the Nation has the power——

Mr. TELLER. The constitutional power.

Mr. NEWLANDS. The constitutional power to utilize the waters of the rivers for the purpose of making electrical power, for that is the only thing that is suggested. My answer to that is that under the interstate-commerce clause of the Constitution the Nation has control over the rivers for purposes of navigation, and the States themselves can not, without the consent of the Nation, do anything to the rivers that will interfere with navigation.

Now, what does the development of a river for purposes of navigation involve? Does it involve simply getting a dredging machine for the purpose of removing the shoals and the sand bars that obstruct navigation or for the purposes of digging a channel which ships of a given draft can traverse? Can it not adopt measures that will prevent the sediment and sand from being deposited in the shoals and sand bars? Can it not take hold of the treatment of the entire river from the very springs to the mouth for the purpose of promoting navigation?

It may be admitted that the Nation has no power to enter upon irrigation as such, except, perhaps, as the owner of the land with the same right that any other proprietor has. It may have no power to engage in the protection and replacement of forests as such. There is no power expressly granted in the Constitution for that. It may have no power to enter the electric-light business. It may have no power to enter in the business per se of clarifying the streams; but if in improving a river for purposes of navigation, for the purpose of promoting interstate and foreign commerce, any of these enterprises will either aid in the maintenance and the securing of a fixed and suitable channel for navigation or diminish the cost of the works for navigation, the Government can not only undertake the great work of securing a channel for the stream, but can engage in the collateral works that are useful and necessary for the harmonious, economical, and comprehensive development of the entire stream for purposes of navigation.

Mr. TELLER. Mr. President——

The VICE PRESIDENT. Does the Senator from Nevada yield to the Senator from Colorado?

Mr. NEWLANDS. Certainly.

Mr. TELLER. Mr. President, I do not desire to interfere with the discussion of this question by the Senator in his own line and in his own method, but I would like to say to him that the Supreme Court has passed on these questions at least thirty times in the last 60 years, and I would suggest to him that if he desires to accomplish what he says he does—namely, a general utilization of the waters of the country for navigation—he had better not complicate it with something like a claim on the part of the Government of the right to establish water powers and electrical plants in this country.

The Supreme Court has declared that all the Government has is a franchise in the waters—the right to run ships on the waters, but

that it has no ownership whatever in the water, not even in navigable waters, much less in nonnavigable waters.

I myself, Mr. President, if the Senator will allow me, am a great believer in the utilization of the waters, and as a friend of the measure I hope those who advocate it will not complicate it with that which is certain to defeat the purpose which they claim they want to accomplish. The States are the owners of the waters, and the States will maintain that ownership, because there are 50 years of unbroken decisions of the Supreme Court in their favor. There is a recent case in which the court has declared that the Government may clean out a stream and may undoubtedly prohibit individuals, or even the States, from filling up a stream and destroying it; but that is an entirely different thing than for the Government to establish a water plant or a power plant, as it is proposed now in the State of California at least, and to demand rental for water which I assert belongs to the State of California and not to the General Government.

In the interest, Mr. President, of this public work, with which I fully sympathize and have for many years, I hope the friends of the measure here will at least understand what the constitutional rights of the Government are, and not attempt to invade the rights of the States.

Mr. NEWLANDS. I do not propose to follow the Senator from Colorado into a discussion of the question as to who owns the waters of a navigable river. That ownership must be a very elusive one, for every drop of water is gradually making its way from the sources in the mountains to the Gulf and the ocean. I imagine, so far as ownership is concerned, that the ownership of water would be like the ownership of wild beasts—that it would depend upon the absolute subjection to the power and dominion of the party who secures possession.

Mr. TELLER. I can only recommend my colleague in the Senate to study the question of the right of the States to the water, and I think thereafter he will not say it is elusive. It is as positive as the ownership of the land, and parties owning water abutting their land, under certain conditions, are as absolutely the owners of the water, so far as concerns making it useful, if they choose, as they are of the land abutting.

Mr. NEWLANDS. As I stated, I do not propose to follow the Senator into that very interesting discussion because it is not necessary for me to take up that question in order to maintain all that I contend for.

Mr. TELLER. I hope not.

Mr. NEWLANDS. I think the Senator will be convinced of that when I get through.

#### A BROAD AND COMPREHENSIVE TREATMENT.

Now, I ask, what is a broad and comprehensive treatment of a river that is to be used in interstate or foreign commerce for navigation? Take the Mississippi, so far as its western tributaries are concerned; the Missouri and its tributaries; the Yellowstone; the Madison; the Gallatin; and the Jefferson Rivers; farther down, the Platte and the Kaw; farther down, the Arkansas River. All these rivers have their source in the region to which the Senator and I belong—in the snows of the mountains.

Now, what does a rational treatment of that river, so far as concerns its utilization for navigation, involve? It involves for one thing the prevention of floods, for these waters rush down in torrential streams in the spring months and destroy property, and then during the summer and fall months, the waters having rushed down to the ocean and having been wasted, the river itself is reduced to an attenuated stream upon which boats can not float. What does a rational treatment of that river involve? Obviously storage, all along the line, wherever it can be done practicably and economically and with a view to the reasonable cost of the entire enterprise. What does storage upon those upper rivers mean? It means the construction of artificial reservoirs in which these waters are impounded during the period of flood, and from these reservoirs waters are led over the Great Plains, the arid and the semiarid plains, and used for purposes of cultivation. These plains absorb the water like a sponge and gradually give it out by the process of seepage to the tributary streams of the great river. Give it out when? Give it out when it is most needed for navigation, during the months of July, August, and September. So irrigation is a proper method of treating the river for navigation, for it is one method of impounding the flood waters of these tributary streams, preventing those flood waters from creating destruction below in the spring and preserving them for a beneficent purpose later on in the summer and fall months. In the more humid regions, in which irrigation is not required and in which evaporation is less rapid than in the arid and semiarid districts, the reservoir may be used for the storage of storm and thaw waters, which may be kept impounded, as is now done, for example, in the upper Mississippi and in some foreign countries, until the time of low water, when the contents may be let out in such manner as to maintain navigation throughout the summer.

Now, the Senator's view doubtless would be that the Government has no power to enter upon the reclamation per se of arid lands not in its own ownership. There is no power expressly granted in the Constitution for that purpose, and I believe with the Senator from Colorado that this is a Government of granted powers, and that we can only exercise the granted powers. I shall simply contend for the full exercise of these powers. No one will deny the full power of the Government over the question of interstate and foreign commerce. No one will deny the power of the Government to make a river navigable. If you do not deny that, then the Government can adopt any practicable means to make it navigable, and it need not confine itself to digging a channel when it can by this process of the storage of waters at the heads of these streams and by this process of spreading those waters over the vast arid and semiarid plains suspend the flow of that water until by the process of seepage it gradually goes back to the streams at the time when it is most needed for the maintenance of a full, safe, and sure channel for the purposes of navigation.

#### FORESTRY.

So it is with forestry. The forests are the conservators of moisture. In a state of nature the streams gathering in forests run clear

and in fairly uniform volume throughout the year. The soil is protected from the beating of the storm by the branches and foliage, which break the drops into spray, and this trickles gently down the trunks and along the roots, so that the soil remains open and pervious. This soft, spongy soil is further protected by a mulch of partly decayed leaves, twigs, and shreds of bark and wood; and in the mulch and friable mold the waters of rains and thaws are absorbed as in a sponge, and do not flow off quickly in rills and freshets, but seep slowly through the soil into the permanent springs by which the streams are fed. Denude large areas of their forests, and the rains falling from the heavens rush off the lands in torrential streams and increase the volume of the floods that are so destructive below. We all know that one of the causes of these great and destructive floods has been the destruction of our forests. If, then, the forests are conservators of moisture, if they are natural storage reservoirs of moisture, and if the impounding of these waters in artificial reservoirs for the purpose of holding them until they can swell the volume of the stream below for the purpose of navigation is constitutional, can we not make use of the reservoirs that nature has created and develop them, and, if we can do that, can we not take control over large areas of land and replace the forests that have been destroyed?

Of course the Constitution grants no power to the National Government to enter into the timber business or the lumber business as such, but it has the power to make a sure, stable, equal stream for purposes of navigation; and if it can accomplish this by developing the forests, the natural reservoirs of the country, so as to hold these waters in suspense until the time when they are most needed, it has the power to preserve and protect the existing forests, it has the power to replace the forests; and certainly in that connection it has the power to plant trees; and if it has the power to plant trees it has the power to sell the timber which is planted when it becomes unnecessary to the main purpose of the enterprise—the conservation of moisture.

If the forest becomes too crowded, is there any objection to the removal of useless trees? And can you say that because the Constitution has not granted to the Government the power to enter into the lumber business it therefore can not sell that timber as a part of the compensation of the enterprise itself? Would you say, with reference to these great reclamation enterprises which constitute a rational method of treating the river for the purpose of navigation, that the Government can not compensate this fund and diminish the cost of the entire enterprise by selling irrigation rights, thus getting back proportionately from all the lands benefited the cost of the reclamation work and diminishing the cost of the main enterprise—the promotion and development of a navigable stream?

#### RECLAMATION OF SWAMP LANDS.

But the comprehensive plan for the development of these waterways not only involves reclamation by irrigation and the protection and replacement of forests, but it also involves the drainage of swamp lands below. The reclamation of swamp lands is the antithesis of the irrigation of arid lands. There is too little water on

the land above and there is too much below. Why is there too much below? Because the river breaks through its banks, divides itself into numerous channels, creates bayous and sloughs, and thus dedicates vast areas of cultivable land, the richest in the world, to poverty and death.

Mr. BEVERIDGE. Will the Senator from Nevada permit an interruption?

Mr. NEWLANDS. Certainly.

Mr. BEVERIDGE. As I said and as the Senator from New Hampshire said, I think this is one of the very greatest subjects before the American people, and one, perhaps, in which they are as much interested as any other just at the present time. I wish the Senator would follow, till he establishes it more closely, the analogy between the Government's power over the conservation of waters and their control as navigable waters and the power of the Government over forests. For example, one of the most fundamental rules in statutory and constitutional interpretation is that if the power is conceded it carries with it any incidental power necessary to make it complete. So if it be conceded—and that has been thrashed out—that we have the right as a Government to control certain forest reserves it follows as an incident of that that it is not only our right and our power but our duty to dispose of what is called “down timber” and “excess timber”; and therefore the Government not only has the right, but it becomes its duty, to become a lumber merchant to that extent.

Again, our power to build the Panama Canal is conceded, let us say. That carries with it the power to do what the Government is now doing; that is, to operate a line of steamships and also to operate a railroad across the Isthmus of Panama. So it can be carried out in numberless instances.

I would be glad if the Senator would spend a little more time in establishing the analogy between the Government's power over the conservation of waters and their control as navigable waters and these other things which the Senator has referred to.

If the Senator from Nevada will permit me for just a moment further: In reference to what was said by the Senator from Colorado, of course, it has been held since *Gibbons v. Ogden* until now that the power of the National Government over navigable waters, even wholly within a State, goes to the point that signals and lights may be maintained by the National Government and it may do everything else that is necessary. The State has no right to establish lights or signals, even in its own waters, because they might interfere with the navigation of commerce that passes beyond the State lines.

So again, the National Government, in improving waterways, for which we now expend scores of millions every year in the river and harbor bill, has the right to prevent the State from in any way obstructing that waterway. If that was not conceded, of course, it would be destructive of the power to improve it. Therefore, if the establishment by the State of an electric-light plant upon the waters running through the State, which were navigable, interfered with that purpose, the National Government would have the right to prevent the erection of such an electric-light plant. But per contra, if the erection of such an electric-light plant became necessary as an

aid to the navigability of the waters, it would necessarily follow, would it not, that we would have the right to construct it?

The Senator will pardon me, but I think it is a vital point in his argument, and if he will follow that analogy a little more closely, it will be agreeable to many of the friends of his measure.

Mr. NEWLANDS. I have already gone further into the argument of these questions than I intended when I rose. My purpose was simply to present a statement of the bill and an explanation of its provisions, but I have been drawn out somewhat by the challenge of the Senator from Colorado. It was not my intention to go into all these refinements. However, I will pursue the argument that I was pursuing regarding the various uses of the waters of a stream which tend to the promotion of its navigability, and I will take up in its turn the suggestion that the Senator from Indiana makes with reference to electric power.

I was upon the question of the reclamation of swamp lands, which I stated was the antithesis of the reclamation of arid lands, the swamp lands being at the lower reaches of the streams, the arid lands at the sources of the streams. We all know that a great river in making its way through these lowlands during periods of flood divides itself into numerous channels, which make bayous and sloughs, and create these vast areas of swamp lands, incomparably rich, for they are composed of alluvial soil, and yet are incapable of cultivation because of an excess of moisture. Now, the reclamation of swamp lands as such, unless the Government is the owner of those lands, would not be one of the functions of Government under the granted powers of the Constitution. But the control of the river for purposes of navigation is; and if the control of that river involves the construction of levees along its banks so as to keep the river in its channel, so that the large volume of water can scour the bottom and create a channel fit for navigation, then that is clearly within the powers of the Government. In like manner, when the needs of navigation demand, it is competent for the Government to maintain the volume and regimen of rivers required for commerce by laying drains in such manner as to maintain a flow at low-water stages. The reclamation in both cases is simply incidental and collateral.

#### COMPENSATORY PROJECTS.

Would you say that when the Government goes to this great expenditure, which involves an incidental benefit to the lands of private owners, it can not seek in some way compensation to the fund for this beneficial work, and thus diminish the cost of the primary enterprise? Can not the Government by cooperation with States, by cooperation with districts, so organize this work as to divide the cost between the States or the localities affected and the National Government? The project might not be feasible at all unless the Government could diminish the cost by putting a certain amount of the cost upon incidental and collateral works of this kind. And so this great plan of developing a river for navigation may involve, and in most cases does involve, the actual reclamation of large areas of swamp land.

## WATER POWER.

Now we come to the question of water power. The Government will be compelled not only to construct dams on the tributary streams for irrigation, but sometimes on the great river itself—for the purpose of constructing locks through which vessels can pass, and thus avoid dangerous rapids. If the Government does construct such a dam for the purpose primarily of promoting navigation, will the Senator from Colorado contend that the Government can not diminish the cost of the enterprise by selling the water power created by that dam?

Mr. TELLER. Does the Senator want me to answer his question now?

Mr. NEWLANDS. Yes.

Mr. TELLER. That is the very point I wanted to bring to the Senator's attention. That is exactly what I wish to deny. The Government has not any power under the Constitution, for any purpose whatever, to go into business of that character. It has not any right to create a water power and sell the power. If the State did not interfere, the Government would have no such authority under the Constitution. But the State, if it had a proper conception of its rights, would not allow that to be done. The State would say it would do it if it was to be done; and if the Senator will pardon me, some day I will present him a brief on this subject which I think will convince him that my suggestions are fully supported by the decisions of the Supreme Court of the United States.

I am not afraid that the Senate will go into anything of that kind. But I do not want to have this initial step, as it were, in this waterway business complicated by what will appear to those who study the law on the subject as an utter impossibility.

Mr. NEWLANDS. I take issue with the Senator upon that question. I shall be very glad to read the brief to which he has referred me, but I can not question the power of the Government to build a dam in a river for the purpose of constructing locks which will be serviceable to navigation.

Mr. TELLER. The Senator has no business to put me in that category. I have never suggested that the Government could not do that.

Mr. NEWLANDS. I was going one step further:

Mr. TELLER. I say most emphatically the Government may do that, but the Government has no right, then, to establish an electric-light plant on it and sell the light. That is what I assert.

Mr. NEWLANDS. If the Senator had heard my sentence through, I think he would not have taken exception to it. I will repeat part of what I did say and add to it what I intended to say.

I do not doubt for a moment the power of the Government to construct a dam for the purpose of establishing a lock which will be serviceable to navigation.

Mr. TELLER. Neither do I.

Mr. NEWLANDS. Thus far the Senator agrees with me. Now, I was going to add, nor do I doubt the power of the Government to diminish the cost of that enterprise to the Government by availing itself of the sale of the power created by that dam.

Now, another thing. If the Senator insists that the Government can not do that without the consent of the State, then I say we should take steps in this bill for obtaining the consent of the State.

Mr. TELLER. I deny the right of the Government to do it even with the consent of the State. This Government can not go into any commercial business of that kind.

Mr. NEWLANDS. I would not expect the Government to go into the commercial business of peddling out light—

Mr. TELLER. Or water.

Mr. NEWLANDS. Of constructing poles and stringing wires and distributing light throughout an entire community, or distributing power throughout an entire community, but I do contend that it would be entirely within the governmental function to diminish the cost of the great work; and if it can accomplish that result by some method of leasing the power, at the same time so controlling the lease that it will not result in monopoly and oppression, I should say it had that power as a means of diminishing the cost of the enterprise.<sup>1</sup>

But if there is anything in our dual government that prevents the Nation from acting without the consent of the State, then I see no reason why the two sovereigns affected should not confer together about the matter—the Union of States, the one sovereign, the individual State where the dam is located, the other. Can we doubt that they would come to some rational conclusion? Would the lesser sovereign deny to the greater sovereign the right to get a value out of that which it itself had created that would be in a measure compen-

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<sup>1</sup> In fact, that is just what the Government is doing now, and has done for several years, under statutory authority. The legislation has so often been repeated and has so long remained unquestioned that the governmental policy with respect to water power may be regarded as established. Under this policy the Federal Government reserves the right, when authority is given to private corporations to dam actually or possibly navigable streams for the development of power, to use without charge so much of that power as may be required for specific uses by the Government, this reservation being in the nature of a consideration. When the works are constructed cooperatively between the Federal Government and prospective power users, then the Government reserves rights of administration and specific uses, and also limits the lease or authority to the private party to use the power to a specified period; while, if the work is constructed at the cost of the Federal Government, then the statutes authorize the leasing of the power developed thereby under customary governmental restrictions as to advertising, etc. (The first case is covered by the provision of the general "Act to regulate the construction of dams across navigable waters," to the effect that "The person owning such dam . . . shall grant to the United States a free use of water power for building and operating" any constructions which may at any time be required "in the interests of navigation." (U. S. Stat. L., vol. 34, p. 386.) And this provision is repeatedly affirmed in special laws of various dates. The second case is exemplified by "An act to enable the Secretary of War to permit the erection of a lock and dam in aid of navigation in the Tennessee River near Chattanooga, Tenn., and for other purposes" (U. S. Stat. L., vol. 33, p. 309), in which it is provided in section 4 "That in consideration of the construction of said lock and dam, free of cost to the United States, . . . the United States hereby grants . . . such rights as it possesses to use the water power produced by said dam and to convert the same into electric power or otherwise utilize it for a period of ninety-nine years: *Provided*, That it or they [the grantees] shall furnish the necessary electric current while its or their power plant is in operation to move the gates and operate the locks and to light the United States buildings and grounds free of cost to the United States: *And provided further*, . . . That the Secretary of War is hereby authorized to prescribe regulations to govern the use of the said water power and the operations of the plant and force employed in connection therewith." The case of leasing is covered, for example, in the provision of the river and harbor act approved June 13, 1902 (U. S. Stat. L., vol. 32, p. 358), under the item for "Improving Cumberland River, Tenn., above Nashville," as follows: "And the Secretary of War is hereby authorized, in his discretion, to grant leases or licenses to the highest responsible bidder for the use of the water power created by said dam, at such a rate and on such conditions and for such periods of time as may seem to him expedient. . . . *Provided*, That any lease or license so granted shall be limited to the use of the surplus water not required for navigation. . . . *Provided further*, That before leasing or licensing such water privileges, or issuing permits for the construction and operation of such canals, or otherwise disposing of any water power or privilege, the Secretary of War shall first advertise the same in one or more daily papers at Nashville for sixty days immediately preceding, stating specifically the right or privilege proposed to be leased or conveyed, with its exact limitations, inviting bids for the same, and he may, in his discretion, then lease the same for a specific term of years at so much per year, to be paid semiannually in cash into the Treasury, and the Secretary of War shall reserve the right to reject any or all bids.")

satory of its own expenditures? The two sovereigns can do business with each other just as individuals can; and there is no reason why the Union of States should not enter into an arrangement with an individual State that will present a just solution of the question. If the State has the property rights, for which the Senator contends, it can share with the Nation the burden of cost of a work necessary or useful for both navigation and power. If the Government spends millions of dollars in the construction of a dam, it should certainly have compensation for the power which it itself has created. Common honesty would dictate that.

I did not intend at this time to discuss the question of governmental functions at all; it is a matter of business, and that is what I hope to see established as the basis of this enterprise. I hope to see this great work put upon a business basis. I believe the Government can do work in a businesslike way in carrying out the granted powers, and I believe in giving its agents a pretty free hand to enable them to do business effectively.

The reason why I present this bill now is because I fear that in the future should we enter upon this work Congress may without considering these related questions of use and compensation and cooperation put the administrative agents of the Government in a strait-jacket and thus prevent them from conducting the work in a businesslike way.

I do not intend, Mr. President, to be drawn off into nice refinements as to constitutional power. I do not propose to balance the power of the National Government with the power of the State in an individual matter. Here is an enterprise which is of the greatest importance to the entire country. We propose in aid of the development of commerce between the States and commerce with foreign nations exclusively within the jurisdiction of the National Government to enter upon this great work of utilizing our rivers in a businesslike way for every beneficial purpose to which they can be put.

We must realize that it is not wise to take up simply one use of the river for navigability and lose sight of all the other uses when the adoption of the other uses and the development of the other uses will diminish the cost of the enterprise and make it more efficient for the public good. The cost might be entirely prohibitory if it were not for the correlated uses and the contribution or compensation secured through them, for this is a work which can be accomplished either by the National Government itself or by the cooperation of the National Government with States, with corporations, with municipalities, and with individuals.

#### CLARIFICATION OF STREAMS.

We can not only take up this question of the utilization of water power beneficial to the entire people and with a view to economy in the enterprise itself, but we can take up with it the question of the clarification of the streams. That is a matter, you say, of sanitation, affecting the people of the towns and cities along the borders of the streams. But you must recollect that these great rivers are full of sediment and sand, every particle of which is a destructive tool when directed against the banks of the river. Clear waters are not nearly so destructive or obstructive as muddy waters, as water

filled with sand or soil. It is well demonstrated that every particle of soil, every particle of sand in the water, is a destructive agent. When deposited in the shoals and bars it obstructs the channel. When suspended in the water and driven by the force of the current against the banks of the river it breaks them down, and the broken bank carried down in the current sinks within a few miles and makes the shoal or bar.

What do we find in the great rivers that pass through alluvial bottoms? The banks dissolve like sugar when the force of the water is directed against them. A capricious stream like the Missouri River makes its way through a bottom of this kind from Kansas City to St. Louis, a distance of about 300 miles, a valley from 4 to 10 miles in width, bounded by bluffs on either side; and that river during the period of flood, its banks dissolving like sugar before the force of the water, can make its way anywhere in the alluvial bottom between the bluffs, so that the farm of to-day becomes the swamp to-morrow, and the river bed of to-day becomes the cultivated farm to-morrow.

We can clarify that turbid water, swollen with sediment and sand. How? By the prevention of soil waste and by the protection of the banks by willow and stone revetment. There washes down the Mississippi River every year pretty nearly a continent of the best soil. At New Orleans to-day the alluvial soil is twelve hundred feet deep.

The great problem we have had in the lower reaches of the Mississippi has been the control of the Passes, the river making its way to the Gulf through three passes, building up on either side, by the deposit of sand and sediment, a continent. So it is hardly an exaggeration to say that in time the great Gulf itself will become a continent.

Now, is the Government simply to dredge out that sand and sediment when it settles down in the bed of the stream and deposit it somewhere else, whence it will make its way gradually back to the stream, or can it take measures to prevent that sediment and sand from coming into the stream? Can it not take measures to prevent this soil waste and this bank destruction? It is fair to say that in time the prevention of soil waste can be brought about by proper methods of cultivation enjoined by the National Government, perhaps as a matter of persuasion at first, though it might well become a matter of compulsion. The conservation and development of the natural resources of the country—the forest, the land, the water—for every purpose require the scientific treatment of a stream and the full consideration of every related use.

How is this to be done? In the first place, this fund is created to which I have referred, a fund for uninterrupted and continuous work, the dedication of \$50,000,000 immediately to this work. The Senator from Idaho says it may lie idle for a time. There is \$250,000,000 or \$300,000,000 in the Treasury now that is lying idle. The Treasury deposits a large portion of it in banks of the country and receives no compensation from it. It will be no more idle than it is now.

It is incumbent upon us to show our fixed and determined purpose that this work shall commence, and that it shall be prosecuted without interruption, and not in the elusive and disjointed way in which it has been prosecuted heretofore.

## AN ADMINISTRATION MATTER.

Now, this bill gives the executive department great power, and I have no doubt that objection will be urged. I believe in giving the executive department full power in this matter, because it is an administrative matter. I believe in preserving the boundaries of the functions of the Government; and I insist upon it that Congress has attended too much to administrative matters, and the very reason of the inefficiency of our work upon our rivers and harbors has been that Congress has sought to do administrative work and has done it badly, as it always will do it badly.

Ninety men in the Senate and four hundred or more in the House working on legislation for the country do not constitute efficient bodies for administrative work. Wherever administrative work is to be done I believe in intrusting it to the executive department and putting the responsibility upon the Executive. We did this with reference to the reclamation act. After having educated the entire country to the desirability of entering upon the great reclamation work, the western men found that they were unable to move because they were divided among themselves as to what should be done. Each man wanted a project first undertaken in his own State and was unwilling to concede that another State had superiority or advantage as to priority. We were in confusion as to the methods of administration. Finally we got together, and what did we conclude to do? We passed a bill creating a fund derived from the sales of the public lands of the country and dedicated that fund forever to this work. Then we gave the power to the Secretary of the Interior to go ahead and investigate the projects, and if he found them feasible to do the work, and the only limitation put upon his power was that he should not let a contract unless the money for its payment was in the fund. That was the only limitation. We did not go into details regarding the organization. There can be no effective organization which is not the result of the process of evolution. Let Congress attempt to organize at the start a great working force of this kind and it will always fail. They will have to come back to Congress for amendatory and supplementary legislation, all delaying the prosecution of the work. We did the simple thing and put the responsibility upon the Secretary of the Interior, and the Secretary of the Interior accepted the responsibility and held the responsibility. Congress, of course, reserved to itself all the powers of supervision, of criticism, of examination. Reports were required. The officers of the service were compelled to come before the committees and give full expositions of their work. Committees visited the works themselves and made actual inspection, and then upon their return to Congress summoned the officials before them and examined them upon matters concerning which they desired information.

So the whole service, under the critical eye of Congress, but with full powers of administration, has advanced and accomplished a great work. It has in the short period of its existence removed, I believe, twice as many cubic yards of earth as have been removed in the Panama Canal. It has constructed works of great magnitude and has considered problems many of which were as difficult as those involved in the Panama construction. We have organized in the Reclamation Service a body of skilled engineers capable of un-

dertaking any work of construction from the construction of a canal to the construction of a railroad and the development of the inland waterways themselves.

So it was with the Panama construction. Accidentally we plunged there into wise legislation. Congress was divided into contending forces as to whether we should have the canal at Panama or at Nicaragua. Different views prevailed as to whether it should be a lock canal or a sea-level canal. There would have been the widest divergence of views as to all the details of operation. But in the confusion a simple bill, I believe drawn by Senator Spooner, of Wisconsin, appropriated \$50,000,000 for the work and gave the President full power to go ahead and do it. We all know how that has worked out.

Suppose we had started in the first place and insisted upon it that all the plans should be submitted to committees of Congress with their differences of opinion, and to Congress itself with their differences of opinion, we would have been debating to-day over mere matters of detail. But out of the very necessity of the situation, inasmuch as Congress was unable to agree, a simple bill was prepared which gave the President full power. Does anyone contend that the President has abused that power? Is there any President whom we can elect who will be so dishonest or so inefficient as to abuse that power? He has gone about in a business-like way to create an organization, each organization in itself tentative at the start. I believe the Panama Canal service has been reorganized three times. First, we had the Walker Commission, and then we had the Shonts Commission, and then we had the Goethals Commission, a commission the same in number, authorized, I believe, by Congress, but maintained in organization at the will of the Executive. We were probably unwise in compelling the Executive to have a commission of nine men. He himself in a recent message or in a recent speech has indicated that perhaps a more efficient method of organization would be one commissioner, with subordinates, so that one person could be held responsible for the work.

The first two commissions held their sessions here. The last commission is located in Panama, and consists mainly of officers of the Government, an engineer officer of the Army, an engineer officer of the Navy, and a medical officer of the Army, who has done the sanitation work for that district. After various experiments the President has placed the control of the work in the Engineer Corps of the Army, noted for its efficiency, integrity, and high sense of honor—a corps which has been compelled thus far to adapt itself to the repressive policy of the Nation as to rivers and harbors, but which, under a progressive policy and aided by the other scientific services of the Government in matters relating to their jurisdiction, will accomplish as brilliant a work in our inland waterways as it is now accomplishing at Panama. We have given the Executive a free hand, and we have been wise in giving him a free hand. Had we sought to impose upon him congressional restraints and put him in a congressional strait-jacket, the work would not have advanced as it has advanced.

So I contend that in this case we should give the President the power not only to enter upon the construction of the work but to make the examinations and the surveys, and to do it without further

authority from Congress, and to appoint such boards and commissions and agents and experts as in his judgment may seem proper, and to fix their salaries until Congress fixes them. The organization can best be worked out by an executive officer and not through the wisdom of Congress.

It will be observed that the Forest Service, the Reclamation Service, and the Panama Canal Service are all engaged in a variety of works incidental to the main enterprises, and they are engaged not only in constructing them but in operating them. Such works include waterworks, electric-light plants, roads, railroads, electric roads, cement mills, and other works of similar character, all incidental and collateral to the main enterprises.

Can it be maintained that the Government should have less power when, in the interest of interstate and foreign commerce, it enters upon the artificialization of rivers and the construction of canals?

It will also be observed that the Panama Canal Service is to be made compensatory by the charging of tolls, the Forest Service by the sale of timber and by charging for grazing permits, and the Reclamation Service by the sale of water rights. So far as the Forest Service and the Reclamation Service are concerned, they will be absolutely self-compensatory. In the case of the Inland Waterways Service it is proposed that the artificialized rivers and canals shall be free to navigation and that no tolls shall be imposed. Is it not, therefore, of all the more importance that the collateral works undertaken by this service through other appropriate services of the Government for the purpose of fully developing every profitable and beneficial use of our rivers shall be made self-compensatory as far as practicable, and that wherever the cooperation of States, municipalities, communities, corporations, or individuals is necessary to accomplish this purpose, such cooperation shall be secured? No one can measure the future value of the water power of the country in the development of electricity. It is probable that this new force has a future value equal to that of all the coal supplies of the country.

In organizing this great work, an ample fund should be immediately provided and as free a hand as possible given to the Executive. In the case of the Reclamation Service, the method of securing a revolving fund from the proceeds of the sales of public lands and of water rights has proven an incentive and an inspiration to the best efforts of those in charge of the work. The methods are those of a business house which knows its condition at all times. Under such a method the Government organization knows just what to depend upon. It can plan for the future and look ahead without uncertainty as to the size of appropriations. Furthermore, it is inspired to work for practical results, for early and considerable returns which, by the application of business methods, can be again applied to produce more returns. No questions of such magnitude, where a long look ahead is necessary and a comprehensive plan for the future imperative, should be hampered at its beginning by uncertainty of congressional action. Those in charge should know at all times on what they can depend and what results are expected of them. It is therefore essential that an ample fund should be provided and that provision should be made for its replenishment by the sale of bonds whenever congressional appropriation fails. As free a hand as possible in organization

should be given, and particularly during the first few years. After the organization is perfected and its work reduced to a system, then Congress can, if it chooses, substitute the old plan of congressional initiative as to investigation, as to projects, and as to construction in each particular case.

#### PROVISIONS OF THE BILL.

The bill provides that the President in executing this work is "to consider and coordinate the questions of irrigation, swamp-land reclamation, clarification of streams, utilization of water power, prevention of soil waste, protection of forests, regulation of flow, control of floods, transfer facilities and sites and the regulation and control thereof, and such other questions regarding waterways as are related to the development of rivers, lakes, and canals for the purposes of commerce."

Section 3 provides that in order to enable the President to make such examinations, surveys, and investigations, and to construct the work and enter upon the construction, he is authorized to appoint an inland waterways commission and to bring in coordination therewith the Corps of Engineers of the Army, the Chief of the Reclamation Service, the Chief of the Bureau of Soils, the Chief of the Bureau of Forestry, and, I might as well add, the chief of the Panama Canal service, for doubtless the observation and experience of all these officials will be beneficial in this great work.

Section 4 provides that the commission shall make full and complete reports of all their acts and doings to the President and to Congress, or to either body of Congress.

Section 5 provides—

That if after such examination, survey, and estimate, such commission shall determine that any project for the improvement or construction of an inland waterway or coastal waterway is practicable and desirable, it may, with the approval of the President and through the appropriate service, construct or execute, or cause to be let, contracts for the construction or execution of the same, in such portions or sections as it may be practicable to construct and execute as parts of the whole project: *Provided*, That the necessary moneys therefor are available in the inland-waterway fund.

This therefore gives the power to the President, without further authority from Congress, to immediately enter upon the construction of these works which are determined to be feasible and desirable.

Section 6 provides—

That such projects may include such collateral works for the irrigation of arid lands, for the reclamation of swamp lands, for the conservation or replacement of forests, for the clarification of streams, and for the utilization of water power as may be deemed advisable in connection with the development of a channel for navigation or as aiding in a compensatory way in the diminution of the cost of such project.

Section 7 is also a very valuable section. It provides—

That such commission is authorized, with the approval of the President, to enter into cooperation with States, municipalities, communities, corporations, and individuals in such collateral works, and to make arrangements for the proportionate payment of the cost thereof out of the inland-waterway fund and by the States, municipalities, communities, corporations, and individuals benefited thereby, in such manner as to secure an equitable distribution of the costs and benefits: *Provided*, That the cost of such collateral works shall be paid, if practicable, out of funds provided therefor by Congress, but if sufficient provision

therefor is not specially made by Congress, such commission is authorized to pay for the same out of the inland waterway fund, but the total payments made on account of such collateral works from such inland waterway fund shall not exceed 10 per cent thereof, and provision shall be made, as far as practicable, for the reimbursement to such fund of such payments by the States, municipalities, communities, corporations, or individuals benefited thereby: *And provided also*, That the inland waterways developed shall remain free for all the uses of navigation.

#### EQUITABLE APPORTIONMENT.

Another section provides that regard must be had "to the equitable apportionment and contemporaneous execution of the projects contemplated under this act among the several waterway systems of the country," so that every section of the country will feel that it is directly interested in this legislation and in this fund, and every section will feel that contemporaneous work will be conducted throughout the entire country upon feasible projects.

Mr. President, it is useless to propose in the Congress of the United States any individual project. The people of this country are not prepared to enter upon this work unless we prepare a comprehensive plan that will include the entire country.

This work is not so difficult as many think. So far as the Pacific coast is concerned, it involves simply the Columbia River, the Sacramento and the San Joaquin Rivers, and the consideration of the related questions there of the irrigation of arid lands and the reclamation of swamp lands; and as to those projects, they will be largely self-compensatory if we provide in this bill for proper co-operation with States, municipalities, communities, corporations, and individuals.

You say the Government goes into partnership. No partnership, of course, is involved, but cooperation is involved; and if by uniting the powers of the States and the powers of communities and the powers of individuals with the powers of the National Government in this great work we can diminish the cost to the General Government and make the project, which would otherwise be so costly as to be impracticable, absolutely feasible, shall we hesitate to enlist that cooperation? Good business judgment requires it. The coordination of all the Government services of the country related to the use of water, the cooperation of the Nation with every State, every municipality, every community, every corporation, and every individual capable and willing to enter into this work and which will bear its proportion of the expense, will result in the conservation of the natural resources of the country and their preservation from monopoly.

#### COLLATERAL WORKS AND COMPENSATION NECESSARY.

It would be very nice, of course, for the United States to conduct these great works without view to any compensation to itself or benefits conferred upon others. It would be very nice for it to construct great dams costing millions of dollars and then turn them all over, under noxious State legislation, to great monopolies that would use them for the oppression of the people.

It would be very nice for Congress to build up forests, to preserve forests, to replace forests, and then let the Lumber Trust utilize the fruits of their labor. But I assume that when the American people

determine to go into business in the development of these inland waterways they will conduct the business in a businesslike way, and they will not stand upon refinements as to the boundaries between the Government and the States; and where they find that there is any difficulty as to constitutional power in order to do a desirable thing promotive of navigation, and that the cooperation of a State is necessary, they will insist upon the cooperation of both for the common good. All that we must provide is a board of experts capable of making broad and comprehensive plans for the common good, and public sentiment will force cooperation.

Mr. President, I alluded a few moments ago to the simplicity of the problem before us and gave as an illustration the rivers of the Pacific coast. The problems of the other waterways are not more difficult. The connection of the Great Lakes with the Ohio and the Mississippi is not difficult. The treatment of the Mississippi and its tributaries is not difficult. It will not be difficult to establish a standard channel. It will not be difficult to treat the Gulf rivers. It will not be difficult to construct the coastal canals along the Gulf and the Atlantic, which, connecting bays, sounds, and rivers together, will open up all under the protection of sheltered waterways to boats of standard draft. Artificialization of waterways and construction of canals are as old as civilization. All that is required is good plans, made by competent experts and carried out continuously under proper administration.

Now, Mr. President, I hardly dared venture to hope that in presenting the bill at this time, with the holidays approaching, I should have the opportunity of presenting my views at all fully. I did not expect it. My purpose was simply to put upon record here an explanation of the bill, so that it would go out in the Congressional Record to the country, so that it could go to these great organizations whose members are interested in the development of inland waterways and aid somewhat in the development of public opinion upon this question. Congress rarely creates public opinion; it records public opinion. The real argument of the legislator who wishes to do something in a businesslike way should go to the country and not to Congress.

I will ask leave to print with my remarks Senate bill No. 500, Senate bill No. 499, certain statistics of the Reclamation Service and of the Panama service and the forest reserves, and also an article which I prepared for the Annals of the American Academy of Political and Social Science, entitled "The use and development of the American waterways."

The VICE PRESIDENT. Without objection, permission is granted.

The matter referred to is appended.

#### BREAKING DOWN OF THE RAILWAY SYSTEM.

Mr. NEWLANDS. I wish to add that this question of waterway transportation is, of course, only a part of the general subject of transportation. The railway service of the country is much broken down. The railroads of the country, when there was less business than there is now, sought to increase their tonnage by carrying cheap and bulky products long distances at low prices, and they thus entered upon a carriage which has been mainly absorbed in other countries by waterways. This bulky carriage has absorbed so large a proportion of

their facilities that suddenly, with the great increase in production and population, they found themselves unable to meet the demands of the country. At that time an agitation arose for the regulation of rates and for the better control of the railroads themselves. The railroads, on the one side, regarded their properties as private properties and resented legislative intrusion. The people, on the other hand, regarded them as public servants charged by the law with the performance of public duties, entitled only to a just compensation, that compensation to be fixed by the public either in the shape of tolls or the limitation of return upon capital in the shape of dividends. That contest has not yet reached the end.

The railroads have now reached the point where they admit in some degree the powers and the rights of the public. They now talk about cooperation; they will talk later on about obedience; and obedience is what the American people demand. The only limitation upon the power of the American people over the highways and over common carriers is that the legislation shall not be confiscatory in character. That contest is not yet ended. Meanwhile, the finances of the railroads have been embarrassed, rates of interest have gone up, and the very agitation which has gone on has affected their negotiations in foreign countries for cheap money. They have been unable, even if they willed it, to keep up with the necessary construction in order to meet the demands of increasing population and of business. One eminent railway man declares that it will be necessary for these railroads to expend, I believe, within the next five years, five and one-half billions of money in order to meet the requirements of the country. We all realize that it is now impossible for them to get the money. We might enable them to get the money if we stopped this agitation; but the American people will not rest, whatever may be the consequences, until the true status of the common carrier is ascertained and determined as that of a public servant. So that we can not hope for such conditions as will enable them to finance the construction that is necessary. It is therefore of great importance that we should develop these waterways and that we should develop them quickly.

#### COORDINATION OF RAIL AND WATER TRANSPORTATION.

It would startle the country, perhaps, if we were to say that \$100,000,000 annually for the next five years should be expended; but I believe it ought to be expended in order to meet the requirements of transportation, and the public mind must become accustomed to it. After it is all expended the business of the railroads will not be injured. They will have more than they can then carry, and their carriage will be of products more compensatory than the cheap and bulky products that will be carried by water transportation.

We have had a most marvelous railroad development in this country, which has surpassed that of any other part of the world. But our development has not been as rational, as comprehensive, and as scientific in the matter of transportation as has that of Germany. Her railway transportation, her river and canal transportation, and her ocean transportation have been dovetailed together in such a fashion as to make her carriers the most efficient servants of production and of commerce in the world.

This movement is not one of hostility to the railroads. It is one that supplements the railroad system of the country. If we can add to our ocean service so that that ocean service and the river and canal service and the railroad service of the country will act in cooperation as the handmaidens of production and commerce, we shall have marvelous results.

After we get these waterways developed the question then will be, How shall we administer them? Are the railroads to be allowed to put down their rates during the navigation season to the destruction of their river competitors and to put them up during the winter season when that competition ceases? Shall we permit one public servant to destroy another public servant necessary to the public good? We might crowd these rivers with boats, but capital, regardless of the bitter experience of the past, will hesitate to enter upon the enterprise. As we passed down the Mississippi River we hardly saw a boat. On both sides of the river we saw long trains of cars carrying the products of the country. If the railroads refuse to act in cooperation with the rivers in the future, as they have in the past, they may paralyze the very instrumentalities which we create for interstate and foreign commerce.

We must ourselves—the Nation must—create the corporations that are to act as waterway carriers. We should not submit the incorporation of these great public servants engaged in interstate carriage to the shifting legislation of 46 different States. There is no river boat that on its course will not in going from bank to bank move from one State to another in interstate commerce. The Nation should create its own public corporate servants, and we should protect them.

We may find it necessary in creating these instrumentalities of interstate commerce to exempt them from taxation, State and National, for a limited period. The power is, in my judgment, clear. The Nation can certainly exempt them from its own taxation and can refuse to permit a sovereign State, without the Nation's consent, to place a burden that might be destructive upon a national instrumentality. We may have to protect them against unfair and unjust competition. We may have to compel the coordination of the railroads with them. The railroads to-day have all the terminal facilities upon the rivers. They have the depots and the stations and the tracks. They have all the spaces that will be required for river commerce. The Nation can not permit these national instrumentalities to be subject to the caprice of selfish interests.

All this can be adjusted if we only go further and provide that as to the great national systems of railways, 8 or 10 in number, each one of them having from ten to twenty thousand miles of track and traversing between 15 and 20 States—these mergers shall come under a national charter. We shall then ourselves have created the public agents of the Nation the servants of the Nation for the adequate development of interstate and foreign transportation.

#### THE NATIONAL POWERS.

It may be said that we have not the power to compel the merger of such corporations under a national charter. I admit that we can not forcibly go into a State and compel a State to force a State corporation to come within the national merger, but the Nation can

authorize public carriers, common carriers, incorporated under its laws, to construct new interstate lines, and it can, by the process of persuasion, induce the States, driven by the demands of their own people, to permit these parts of great interstate systems to get together under one national control and charter.

The change will not mean an invasion of the powers and rights of the States. At present we have State corporations engaging also in interstate transportation. Is it not just as logical to have national interstate corporations engage in State transportation? The same public agent, whether State or National, can now engage in both State and interstate transportation. As to the former, it would be subject to the State regulation; as to the latter, it would be subject to national regulation, whether the corporate agent were incorporated under State or National charter. Nor would the police powers of the States or the jurisdiction of the State courts be affected by national charter. The national-bank act, under which the jurisdiction of State courts is maintained, is an illustration of that. If we can nationally incorporate these great railway carriers, and if we can nationally incorporate river carriers, and if we can nationally incorporate ocean carriers, the entire people will then have these public servants under their control, and by the unity and simplicity of the operation the service can be made profitable to the carriers, just to the public, and efficient in the promotion of interstate and foreign commerce.

I am aware that some of my friends call this a centralization of power. Some of my friends on this side of the House are accustomed to apply that term to any power which is exercised by the National Government.

The National Government has not, in my judgment, commenced to exercise its powers under the interstate commerce clause of the Constitution. It has been prevented from exercising the powers which the people granted to the Nation for a beneficent purpose. The main purpose of the formation of the Union was to unite all the States in matters relating to the national defense and to the protection of interstate and foreign commerce. The development of interstate and foreign commerce was the primary cause of the Constitution and of the Union. The growth of transportation has been an accidental growth from a point in one State to another point in the same State. Gradually this accidental growth has advanced until, either under the laws of the States, or outside of the law, or against the law, or in evasion of the law, great systems of railways have been in fact, though not in law, nationalized, unionized, running almost from the Atlantic to the Pacific and from the Lakes to the Gulf. Will anyone deny that the combination has been beneficial, whatever we may say about the methods employed, about the capitalization issued, about the power in politics exercised by these great political masters that ought to be public servants?

Would you to-day enter upon a process of decentralization? Would you attempt to divide these systems up into the units of which they were once composed, each unit comprised within State lines? You would not? Then legalize them under proper restraints as to capitalization, under proper restraints as to profits, and legalize them by the action of the only sovereign capable of dealing with the question.

## NOT CENTRALIZATION, BUT UNIONIZATION.

Centralization! Is that the right term? I should say 'unionization.' The exercise of the granted powers of the Constitution does not involve the centralization of power. It involves simply the unionizing of the forces of the entire people of the country in matters clearly intrusted to the Union of States. This Union is composed of 46 States. We are all parts of this Union. This Nation is not a separate entity afar off, exercising jurisdiction and control and dominion without our participation in it. The States constitute this Union; and they entered into this Union for certain beneficial purposes, one of which was the advancement of interstate and foreign commerce. That involves the creation of the instrumentalities for interstate and foreign commerce, the creation of the public servants that are to engage in interstate and foreign commerce by the Nation and not by a single State of the least public virtue, absolutely controlled by the corporate carriers, who ought to be the servants of the Nation. There is no centralization about it. We unionize the forces of the Nation under the powers granted to the Nation, of which each State forms a component part. If the States were all separate, then would they not have to get together by treaty and settle many matters? We have the best kind of treaty making under our system, the treaty making of this legislative body and the other legislative body—the Congress of the United States—a permanent treaty-making Congress, imposing its will upon each one of the 46 sovereign States in matters intrusted to it for final determination.

I have recently introduced a bill, S. 499, which in most particulars is identical with a bill introduced by me over two years ago, for the national incorporation of rail, river, and ocean carriers. I shall insert a copy in these remarks in the hope that it will be carefully considered in connection with the development of our waterways. I invite also as to this bill the criticism, suggestion, and amendment which I have invited regarding Senate bill 500.

NOTE.—The provisions of Senate bill 499, for the formation of national corporations for railroad and navigation lines engaged in interstate commerce, will be found on pages 159-165 of these hearings.

In conclusion, Mr. President, I trust that we will all take a broad and comprehensive view, not only of the plans relating to the development of our inland waterways but of the plans relating to the development of our foreign transportation and of the plans relating to our railroad transportation. We can only make our powers efficient in the interest of the common good by the full exercise of this important power granted by the people to the Nation—the Union of States, the power to regulate commerce between the States and with foreign nations.

If we will only exercise this power fully, comprehensively, and wisely, both as to the development of our national highways and waterways and as to the creation of the public servants that are to operate them, we can build up such machinery for the development of our domestic and foreign commerce as the world has never known.

I ask that the bill be referred to the Committee on Commerce.

The VICE PRESIDENT. At the request of the Senator from Nevada, the bill will be referred to the Committee on Commerce.

## APPENDIX A.

[From the Annals of the American Academy of Political and Social Science, January, 1908.]

## THE USE AND DEVELOPMENT OF AMERICAN WATERWAYS.

By Senator FRANCIS G. NEWLANDS, vice chairman of the Inland Waterways Commission.

The Inland Waterways Commission is the outgrowth of an agitation which has been conducted for some time, particularly in the Mississippi Valley, for the improvement of our waterways. The President was urged to exercise his constitutional power of making recommendations to Congress, and, pursuing his usual method of first exhausting investigation, appointed an executive commission with a view to gathering into one body a number of men who, either in legislative or in administrative work, had acquired experience in the problems relating to the waterways of the country.

## APPOINTMENT OF THE COMMISSION.

As chairman of this commission the President selected Hon. Theodore E. Burton, of Ohio, who, as chairman of the Rivers and Harbors Committee of the House of Representatives, had discharged the duties of that important position with rare intelligence, thoroughness, and public spirit. He also appointed two United States Senators, Hon. William Warner, of Missouri, and the writer; another Member of the House of Representatives, Hon. John H. Bankhead, of Alabama (the leading minority member of the Rivers and Harbors Committee of the House), who has since become a Senator; and five members of the executive department of the Government. These scientific members are: Gen. Alexander Mackenzie, Chief of the Engineer Corps of the Army; Dr. W. J. McGee, a scientist and soil expert, connected with the Bureau of Soils in the Department of Agriculture; Mr. Frederick H. Newell, Chief of the Reclamation Service; Mr. Gifford Pinchot, Chief of the Bureau of Forestry; and Mr. Herbert Knox Smith, Chief of the Bureau of Corporations. The President reserved the right of adding to the commission in the future certain transportation experts; and it is possible that the commission may, before its work is completed, take up in the broadest way the whole question of transportation.

## PURPOSE OF ITS APPOINTMENT.

The duty imposed upon this commission was to investigate the use of water, not only for navigation but also for all other purposes, with a view to recommending to the President a full and comprehensive plan for the development and utilization of all the natural resources of the country relating to water. Its primary purpose was to facilitate water transportation, upon which the prosperity of the country so largely depends. We have been for some time engaged in the consideration of questions relating to railways, and we are now about to enter upon the related question of waterways.

## WORK PERFORMED BY THE COMMISSION.

Since its appointment the commission has been hard at work upon the problems assigned to it. An organization was effected in Washington on April 29, 1907. Early in May the commission took a trip down the Mississippi River from St. Louis to the Gulf and studied the problems of the lower part of that river. In September a part of the commission visited the Pacific coast and inspected the Sacramento and San Joaquin Rivers in California and the Columbia River in the Northwest. Beginning September 21, the entire body started on a tour of the Great Lakes, embarking at Cleveland and ending at Duluth. Passing from Duluth to St. Paul by rail, the journey was resumed down that river on board a Government boat and continued to Memphis, the President joining the party at Keokuk. After the Memphis convention most of the members of the commission proceeded to Kansas City, and from that place made a tour of inspection down the Missouri River to its mouth. In these various tours, covering thousands of miles, daily meetings were held, at which Government engineers and other experts were examined and much testimony taken relative to the conditions and needs of the rivers.

Besides attending the convention at Memphis, the commission was also represented at the Irrigation Congress at Sacramento, Cal.; the Trans-Mississippi Congress at Muskogee; the Upper Mississippi Convention at Moline, Ill.; at the Atlantic Deeper Waterway Conference in Philadelphia late in November; the recent congress of the National Drainage Association in Baltimore; and the National Rivers and Harbors Congress in Washington, which closed a few days ago. On November 25 the commission again convened in Washington and has ever since been busy considering its recommendations. The President, in his message to the first session of the Sixtieth Congress, stated that he would transmit his recommendations regarding the waterways to Congress after receiving the report of the commission. The work thus far performed is highly instructive and important, but until the report is formulated and made public what I shall say upon the subject must be regarded as only the expression of my individual views.

#### IMPORTANCE OF THE SUBJECT.

The transportation question is the most important question of the day, and the reason that it has suddenly (and somewhat unexpectedly to many of us) become of such pressing importance just at this time is because the railway service of the country has practically broken down. Whilst the railway development of the country has astonished the world, and whilst we have to-day more than half the railway mileage of the world, yet that machinery has proven inadequate to meet the demands of the production of the country. Years ago the railways were competing with the waterways, and practically drove them out of business; but the efforts of the railways to monopolize the carriage of cheap natural products carried in other countries by water has resulted in congestion of traffic and a virtual breaking down of the entire transportation system; and it is essential that we shall take immediate steps to supplement our railway system by a complete system of waterway transportation. Everywhere else in the world water transportation is an important factor in both domestic and foreign commerce. Germany has, perhaps, the most perfect system of transportation in the world. Her rivers have been artificialized from source to mouth, and they are supplemented by a system of canal, rail, and ocean transportation, which, combined, give that country a transportation machinery unequalled anywhere in the development of domestic and foreign commerce.

However much we may rely upon the railways for quick transportation of persons and of products, it is clear that the rivers should also be used; that they should be properly artificialized; that their beds should be made stable and their courses sure for the transportation of bulky merchandise. This class of traffic has too long occupied too large a proportion of the available capacity of the railroads, to the detriment of other more valuable products, and even to the injury of life and limb. Even the great railway managers—such men as Mr. Hill, Mr. Harrahan, Mr. Finley, and others—are urging the development of the inland waterways as supplementary to the railways. Only a few years ago Mr. Hill is said to have declared that water competition could not exist, and that if he were given the money with which to build a double-track railway beside the proposed enlarged Erie Canal he would turn the canal into a lily pond. It will be remembered, also, that with regard to the Mississippi River he declared it could never be made an efficient instrument of conference until its bottom had been lathed and plastered. But the views of these men are changing, and changing because they realize that their railways have been over-taxed, and that they must either expend vast sums of money in their improvement or call in the aid of the waterways. Mr. Hill estimates that it will cost, within the next five years, I believe, five and one-half billion dollars to put the railroads in condition to meet the requirements of the country's traffic. This does not appear to be an overestimate when we remember that the railroads of the country to-day are capitalized at about fifteen billion dollars, and that there is little double track, although every railroad in the country ought to be double tracked.

#### A COMPREHENSIVE PLAN NECESSARY.

I assume that the country will not be disposed to enter upon the work of improving the inland waterways unless a plan is presented which will fairly meet the requirements of the whole country. The movement represents a policy, not a project. It seems improbable that any particular river, such as the Mississippi, will be fastened upon and pushed forward without some assurance

that all the other rivers which require improvement will also be taken up under a comprehensive plan, one involving, ultimately, the highest possible development of all the waterways of the country. It was doubtless with this thought in mind that the President appointed the Commission, and it was doubtless with a view to the formulation of such a plan that he called in the members connected with the Reclamation Service, the Forestry Service, the expert on soils, and the Chief Engineer of the Army. There is practically no difference of opinion, I apprehend, as to the desirability of improving the inland waterways of the country. The public attention is arrested, and I never knew the people to be more interested or united. The important thing now is to give effective direction to this aroused public sentiment by explaining the true scope of the subject and the importance of scientific legislation for carrying out the comprehensive plans which alone will make the undertaking successful. It is possible that the whole question will not be solved for some time, for the reason that Congress rarely takes the initiative; it follows public opinion rather than leads it. It is fortunate, therefore, that these questions are now being discussed in the various conventions and conferences held throughout the country, and it is important that every man who has a thought of value upon the subject should express it.

#### SCOPE OF THE WORK.

It is impossible to enter, with hope of success, upon comprehensive plans for the improvement of our inland waterways without taking into consideration the related questions of forest preservation and restoration, of the irrigation of arid lands, of the reclamation of swamp lands, of bank protection, of clarification of streams, and other kindred matters.

It is necessary to preserve the forests of the country from the destruction which threatens them, not only because our timber supply is diminishing but because forests are natural conservators of moisture and aid in the gradual distribution of the waters to the streams and rivers that flow into the lakes and the ocean. When an area of land is denuded of its forests, the waters falling upon it rush off in torrential streams, causing destructive floods and soil waste; but the forest absorbs moisture like a sponge and gives it out gradually to the springs and streams through the season of drought, thus aiding in the maintenance of a stable channel.

So also with the question of the irrigation of the arid lands on the headwaters of our inland rivers. The cultivation of the vast areas on the upper reaches of the western tributaries of the Mississippi involves the construction of great reservoirs for the storage of water, which is caught while the snows are melting and later on let out through canals upon the plains to meet the demands of the growing crops. These fertile plains drink up the moisture and become themselves great storage basins which return the water by seepage at the time when it is most needed for the maintenance of a channel in the navigable rivers below.

Thus, both forestry and irrigation are essential to the prevention of floods and of soil waste and to the maintenance of a stable channel for navigation, to say nothing of the vast money value or the great sum of human happiness involved in the possession of great forests and vast areas of productive irrigated plains. For the purposes of navigation it is of the very highest importance that there should be a stable channel, one of standard depth; not a variable channel, 40 feet deep at one time and 1 foot at another; not a channel deep in one place and shallow in others, owing to the interposition of shoals and quicksands; but one of standard depth, which will accommodate vessels of standard draft, just as there is a standard gauge for railroads. Anything which will retard the flow of the water during the period of flood and make it available in time of drought will, of course, increase the stability of the channel. And thus it is that the questions of forestry and irrigation become of first importance in connection with the problem of the inland waterways.

Few of us realize as we ought that the soil of our continent is being washed away and that the bottoms of the navigable rivers themselves are drifting slowly into the Gulf and the ocean. The trouble with the passes at the mouth of the Mississippi is that a great delta has been built up there, like the delta upon which the city of New Orleans stands, where there is now a depth of 1,200 feet of alluvial soil which has been deposited by that river. It is not

impossible that in time the Gulf might be turned into a continent by this process.

Closely related to the prevention of soil waste is the matter of the clarification of streams, for every grain of sand in these rivers is a tool of destruction when directed against the river's banks, while clear water cuts the banks but little. The Yellowstone, as its name indicates, is pouring into the Missouri immense volumes of sand, and the Missouri is pouring into the Mississippi vast quantities of alluvial deposits, every grain of which is both a tool for the destruction of the banks and an obstruction to navigation when deposited in shoals and sand bars. The rivers are also the sources of water supply for domestic purposes to cities and towns, and must be purified and made fit for consumption and kept clear of the filth and sewage of cities.

The reclamation of swamp lands must also be considered. Their reclamation means not only the addition of large and fertile areas to the productive resources of the country, but also the control of the streams themselves. These lowlands lie at the foot of the rivers, whose waters naturally spread out wastefully in swamps and bayous. The channels fill up and become shallow because there is no current to carry away the sediment; but when confined in comparatively narrow channels by means of levees the water is thereby raised to a higher level and its current is quickened and becomes an efficient power for carrying away the sediment and scouring the bottoms of the rivers and thus creating a channel of sufficient depth for the purposes of navigation. So that we have also inseparably connected with the question of navigation the related questions of swamp-land reclamation and bank protection.

All these uses of water are important; it is difficult to say which is the most important. But, assuming that the transportation of products is as important as their production, it is clear that for the proper development of our inland waterways we must embrace in one comprehensive plan the treatment of our forests, the irrigation of arid lands, the reclamation of swamp lands, and other related matters. In doing this, vast water power can be developed, and this power must be saved from the control of trusts and monopolies and care taken to direct its use in the interest of the entire people. It is estimated that, on many of our navigable rivers, the power which can be developed in this way will be sufficient to pay the entire cost of the improvement of the streams.

#### CAN THE WATERWAYS BE RESTORED?

The outline which has been given, based upon the requirements of the Mississippi River, is merely an illustration of what is required on the Pacific coast rivers and, in less degree, on the rivers of the Gulf and the Atlantic coast. The business question before us is whether we can restore these waterways as a part of the efficient machinery for the country's transportation. Many doubt it, and I must confess that when I went down the Mississippi last summer and traveled for miles without seeing a single boat, I was inclined to doubt it also. There were a few towboats, but the river towns were neglected, the wharves rotting, and the river fronts largely occupied by the tracks of the railroads, whose trains of cars, running at frequent intervals along the banks, showed how thoroughly they had absorbed the commerce of the region.

These conditions seemed to be due to two causes—the terrific competition of the railroads, which have made a practice of underbidding the waterways during the navigation season and afterwards raising their rates, and also to the failure of the Government to provide and maintain a stable navigation channel. I am also of opinion that the railroads have been somewhat influential in obstructing legislation for the improvement of our waterways, and I believe they now see that this was a mistaken policy.

I have no doubt, myself, about the policy of restoring the commerce of our inland waterways, but I think it is likely to be a difficult task. One difficulty will be in providing facilities for assembling and distributing the products to be carried on the rivers. The terminal facilities at the towns on the rivers are now very poor, when they are not entirely in the hands of the railroads, and terminal facilities mean little in themselves unless the connecting lines of railroad are able and willing to take goods from the waterways and distribute them in the interior. The railroads have, as one of the chief elements of their strategic strength, the ability to assemble commerce in every part of the country and to carry it on cars of standard gauge to any other part of the country; whereas the river carriers are, at present, circumscribed in their efforts by the limits of the rivers themselves.

It is therefore necessary that the railroads shall be brought into the most intimate relations with the river carriers, so that the one system will supplement and aid, not injure, the other. We must broaden the area for water transportation, also, so that it can live, if necessary, upon the trade of the towns accessible by boat. The Ohio can be connected by canal with Lake Erie, the Mississippi with Lake Michigan, and so on, and we can connect the entire Mississippi Valley, the Gulf coast, and the Atlantic coast with each other by a system of sheltered waterways along the Gulf and Atlantic coasts, such as was so ably discussed at the Philadelphia conference, consisting of bays, sounds, and rivers to be connected with each other by canals such as the contemplated canal across Florida connecting the Gulf with the Atlantic coast, the canal connecting the Carolina sounds with Chesapeake Bay, the canal connecting Chesapeake Bay with the Delaware River, the canal connecting the Delaware River with the Raritan, and the canal across Cape Cod—thus giving a sheltered waterway from the mouth of the Mississippi to Maine, upon which it is possible that boats of standard draft could pass from Boston down the Atlantic coast across Florida to the Gulf coast and up the Mississippi River to the Great Lakes. If these things were done and warfare between the railways and the waterways should continue, there would still be sufficient transportation without the distributing aid of the railways to constitute a very influential part of the commerce of the country.

But it will scarcely do to predicate the improvement of our waterways upon the continuance of this antagonism. A few weeks ago I was quoted in certain Ohio newspapers as saying that the appointment of the Inland Waterways Commission was a part of the "big stick" policy of the President. Besides the fact that I never made such a statement, I believe the contrary to be the fact, and that the President, like the commission, is working for greater harmony—not to stir up antagonism between the different transportation systems of the country. My own view is that the waterway system ought to be largely supplemental to the railway system and that it may possibly become necessary, in the event of continued hostility on the part of the railways toward the waterways, to enforce a liberal system of interchange of traffic and use of facilities between the two.

Viewing transportation in the large, it is of the highest importance that its machinery should be so adjusted that the common carrier can make the best and cheapest possible use, in the interest of the public, of all the public highways—of river, of railway, and of ocean. A perfect system of transportation would involve but one control from shipper to consignee, and our aim should be a system that will create great corporate carriers, under proper regulation and control, owning railway lines from the Atlantic to the Pacific and from the Lakes to the Gulf, owning steamboat lines on the rivers and lakes wherever practicable and economical, and also owning great lines of ocean steamers, so that rates can be made and goods be carried from any point in this country to any other point in this country or to a foreign country under a single control and at a single rate, and that rate the lowest one consistent with good service and reasonable profit.

#### LEGISLATIVE REQUIREMENTS.

Having said this much upon the physical requirements of the problem, let us consider what legislation is necessary in order to carry the undertaking into effect. And here the greatest difference of opinion is likely to exist, for while the country is practically united as to the necessity of undertaking the work, the machinery for setting it in motion has not been carefully considered and already there is divided counsel. It has been thought in the past that our Government was incapable of engaging successfully in any great constructive work. This belief has been entirely disproved by the great works begun and continued under the direction of the Reclamation Service and the Panama Canal Service. In the legislation inaugurated for these public works Congress very wisely gave a free hand to the Executive, with the result that by a process of evolution a great administrative organization has been built up in each service that has been conducted on thoroughly businesslike principles. In a bill which I have recently introduced in the Senate (Senate bill 500) I have endeavored to follow that beneficent legislation by putting the whole responsibility for the development of the waterways of the country upon the Executive, whoever he may be, conscious that we will never have a dishonest Executive and that his highest pride will be to carry out success-

fully and economically the great charge intrusted to him. To put the Executive in a legislative straitjacket would be sure to result in inefficiency and failure.

#### INLAND WATERWAYS FUND.

The most important feature of this bill is the creation of an inland waterways fund, to be used both for investigation and construction. The sum of \$50,000,000 is by the bill reserved and set aside as such fund, and the President is authorized, whenever the fund is reduced below \$20,000,000, to make up the deficiency by issuing and selling bonds up to the amount of \$50,000,000. Thus the fund is always kept full, even though Congress should fail to make appropriations. The President is authorized to have examinations and surveys made for the development of the inland waterways of the country and for the connection of such rivers with each other, or with the Great Lakes, by connecting and by coastal canals. In order to enable the President to make such examination and to enter upon works found to be practicable, he is authorized to appoint an inland waterways commission, and to bring in co-ordination therewith the scientific services of the country, such as the Corps of Engineers of the Army, the Bureau of Soils, the Forest Service, the Reclamation Service, and the Bureau of Corporations; and to appoint such experts and boards in connection therewith as he shall deem advisable; and to fix their salaries until the same are fixed by Congress. The commission is required to make reports to the President and to Congress, or to either body of Congress, whenever information is required.

#### CONSTRUCTION.

The next question is as to construction. Under this bill, the President is authorized, whenever a project is determined by the commission to be feasible, to enter upon the immediate construction of the works and to let contracts for the execution of the same, in whole or in part; the only limit upon his power being that the necessary money for the payment of the contracts must be in the waterway fund when any such contracts are let.

It will be observed that the initiative, both as to examination and as to actual construction, is put in the hands of the Executive Department as an administrative matter. It is clear that the judgment of a board of experts will be very much better than that of Congress upon such matters, and that much delay and confusion will be saved by authorizing the prompt initiation of the work. Otherwise, we shall have difference of view, both in committees and in Congress itself, as to the details of the work, as to the relative importance of the projects, and sectional differences will arise, only to be compromised by concessions harmful to this great movement. Congress should exercise the fullest power of examination and of criticism, and, of course, it has the power at any time to change the organization or to stop the work. All these powers should be exercised whenever wise and necessary; but the main purpose of the bill is to enter upon the work in a business-like way, just as a private corporation would do, and not to impair its proper administration by unnecessary legislative restraints, or by the breaks and interruptions in the continuity of the work which have proven so disastrous heretofore when Congress has failed to continue to make the necessary appropriations.

The bill also provides for cooperation with States, municipalities, communities, corporations, and individuals with reference to such collateral works as have been suggested, and for an equitable distribution of the costs and benefits. Wherever practicable, compensation to the fund is to be secured by the conveyance of reclamation rights, the lease of water power, and such other means as may be beneficial to the States, municipalities, communities, corporations, or individuals affected. Equitable apportionment of the work among the several waterways systems of the country is also enjoined by the bill. It is intended that work shall be commenced contemporaneously among the different systems of the country, so that no section may feel that another section is being favored at its expense. The bill is tentative in its nature and designed to provoke discussion and to aid in the framing of a more perfect measure.

#### AFTER CONSTRUCTION, WHAT?

After these waterways are developed they must, of course, be freely used by the people; but their use will necessarily involve the creation of common carriers under laws either National or State. The business of common carriers is not,

in these days, engaged in by individuals; the creation of artificial beings called corporations is necessary for this purpose. It is clear that the transportation of these waterway carriers will be interstate and foreign, and therefore subject to national regulation and control. The Nation should itself create these corporations, and it should supervise their capitalization, control their profits, and make them the obedient servants of the people. At the same time it should protect them against the destructive competition of the railways. The Nation ought not to allow one public servant (the railway company) to destroy another public servant (the steamboat company), both engaged in conducting transportation on the public highways of the country. It might, in order to encourage the operations of the waterway companies, exempt them for a period, as national instrumentalities, from taxation either National or State. These questions should be taken hold of at the start with a strong hand, and the organization of the water carriers should not be left to the laws of the different States. We should not drift into confusion on this subject as we have regarding our railways.

#### NATIONAL INCORPORATION OF RAILWAYS.

The demand for national action as to water transportation will lead to national action regarding rail transportation and finally necessitate the creation by the Nation of the corporations which are to handle both classes of traffic. We must begin to realize that three-fourths of the transportation of the country is now interstate; that our railroad systems are being operated regardless of State lines; that regulation by the individual States operating here and there on the sections of these great systems lying within their boundaries is disjointed, illusive, and illogical; that complexity, confusion, and insecurity, both to investors and shippers, are the results of the present system.

The truth is we have not yet begun to think or act scientifically on this subject, but have allowed ourselves to drift, and the present railway system in this country may be called an accidental growth. The first railroads were built from a point in one State to another point in the same State, and their commerce was at first purely State commerce; but the railroad corporations, at first organized for the transportation of State commerce, gradually developed into great interstate systems, composed of many railroads combined under the laws of a single State, and that, oftentime, a State entirely foreign to the region in which the system operates. In this way 6,000 railroad companies gradually came into existence, of which less than 2,000 are now operating roads, the others having been merged into them, and of these 2,000 almost the entire mileage—at least 170,000 out of a total of 220,000 miles—is merged in 8 or 10 great systems, each controlling from ten to fifteen thousand miles of track and operating in from 10 to 15 different States. So that the growth which began as a purely State growth became, by a process of evolution, a national growth, and it is no longer a question whether the railroads shall be nationalized, for they long ago nationalized themselves, but merely a question whether we shall continue to permit the lesser sovereignties to assume the function which the Nation has neglected of creating its own agents for the transportation of interstate and foreign commerce.

#### THE NATIONAL POWERS.

We can not take the broad view of the powers of the National Government as relating to waterways and carriers by water and refuse to recognize those powers as relating to waterways and carriers by rail. It is curious how united public sentiment is as to the national control of the waterways and how divided it seems to be as to a similar control of the railways.

We have now 46 sovereign States, each absolutely sovereign in all matters of local legislation, and each absolutely subject to another sovereign, the Union of the States, as to all matters intrusted by the Constitution of that Union. The main purposes of creating this sovereignty called the "United States" were two—the national defense and the regulation of interstate and foreign commerce. The regulation of interstate and foreign commerce involves necessarily the selection of the instrumentalities of that commerce, and necessarily also the selection of the public servants that are to engage in such transportation. The Nation should itself create the great corporations which are to engage in interstate transportation by both water and rail. The reason the Nation should frame the incorporation act under which great mergers are to be made is that we must prevent overcapitalization and we must limit their profits. If the Nation is to permit a State to create the public agents which are to do the Nation's business, it should control the legislation of that State; and that, of course, is neither desirable nor possible.

The purpose of the Constitution was not to centralize government, but to unionize government where the general welfare was affected. We unionized the quarantine, because we realized that disease had no respect for State lines; we unionized irrigation, because nature failed to place the rivers entirely within State boundaries; we unionized banking, because the interest of the entire people required one money, a common denominator acceptable everywhere, and a system of exchange inviting universal confidence. And all the reasons which led to the unionizing of these functions of government in the past exist in far greater and stronger degree at this time, with reference to the unionizing of the subject of transportation. We have just reached the threshold of this great question, and it is very important that we shall start right by the Nation's creating its own public agents, and not permitting an inferior sovereignty to do so.

#### MERGERS NECESSARY.

We should drop excitement, reprisal, and retaliation, and get down to the question whether these mergers shall be broken up and resolved into their original elements of purely State railroads, or whether consolidation, properly controlled, shall be permitted. I think all thoughtful men will agree that the mergers of the railways are necessary to the proper development of the transportation system of the country, and that the fullest powers of combination should be exercised, under proper restraint as to capitalization, rates, and profits. To break up these mergers and resolve them into their integral parts, bounded and circumscribed in their operations by State lines, would be a national calamity—if it could be done—as grievous to the public as to railroads. Leaving out of consideration for the present the combination of competing lines, these mergers have been of immense service to the country, although the machinery for bringing them about has been most complicated. The thing complained of is not the fact of combination, but the methods of combination, unrestrained by adequate laws and fruitful of overcapitalization, frauds on stockholders and frauds on shippers.

It is a universal experience that whenever the laws of a country do not meet its economic requirements the people will violate the laws or evade them. That is what has occurred in the case of the railroads. The ingenuity of all the corporation lawyers of the country has been exercised in order to promote the combination of single roads into systems. Although these combinations were absolutely essential to the best development of the country, the railroads were obliged, in order to accomplish them, to evade the laws. This is as much responsible for the spirit of lawlessness in the management of the transportation interests of the country as any other one thing; and I am sure that, if this condition exists (and I fear we must all admit that it does), we, the lawmakers, can not escape our share of responsibility.

The railway is merely the agent of the Government—the agent of the State as to purely State commerce and the agent of the Nation as to interstate and foreign commerce, and the Government has the power to fix the compensation, in the shape of rates on freight or the rate of dividend which the agent shall receive on his investment. It can fix this compensation in the form of tolls, or it can fix it in gross, and all that it must avoid is legislation of a confiscatory nature. I think, therefore, the reasoning is conclusive that, inasmuch as the State can legislate only for State commerce, it can not legislate and ought not to attempt to legislate upon this great question of merger, which is only entered upon for the purpose of promoting interstate and foreign commerce; but that this can only be wisely accomplished by the action of the Congress of the United States, in which every State in the Union is represented, and in the election of which every citizen has a voice and vote.

I am more and more impressed with the importance of the whole problem and with the necessity of preparing a broad and comprehensive plan for the improvement of our waterways and also for their coordination with the railway system of the country. Such a system of waterways, involving ultimately the highest development of forestry, of irrigation, of swamp-land reclamation, of clarification of streams, and of bank protection as efficient means of maintaining a channel for navigation, would relieve vastly the existing congestion of transportation. The perfection of the transportation system of the country will, in my judgment, involve the creation by the nation of common carriers which will own not only great trunk lines of railway, but also lines of steamers on the lakes, the rivers, and the ocean. Combination is an essential part of the economic development of transportation. A perfect system involves, as far as possible, one control from shipper to consignee, and this can only be

accomplished by great transportation lines operating regardless of State or national boundaries, which will utilize the railways, the rivers, and the ocean by methods of carriage adapted to each.

#### A COMPREHENSIVE MEASURE.

It is with such considerations in view, and for the purpose of effectually coordinating the transportation interests of the country, both waterway and railway, that I have introduced in the present Congress another measure known as Senate bill No. 499. In framing this act I have not urged the national incorporation of all railways, many of which lie entirely within the boundaries of a single State, but confine it simply to the construction of interstate railroads and to the combination of interstate railroads already constructed into great systems. As to existing roads, this can only be done with the acquiescence of the States. Some States might attempt to withhold their consent, but they would, in my opinion, soon yield when they found themselves outstripped by their more obliging neighbors. There are other ways of proceeding, but I should prefer persuasion to anything savoring of force; and when I speak of force, I do not, of course, mean actual coercion or the violation of the sovereignty of any State, but the prevention, for instance, of any corporation not under national charter from engaging in interstate transportation—a course unquestionably within the power of the Nation.

The bill provides for the incorporation under national law of carriers, whether by rail or by water, engaged in interstate and foreign transportation, with a provision for the acquisition, with the consent of the State affected, of State-incorporated roads now in existence. The Interstate Commerce Commission is given full control over the capitalization, rates, dividends, and other incidents of the operation of such corporations. When promoters desire to construct a new line of interstate railroad, or to combine old lines into one system, they will be brought before this body of the highest intelligence, character, and efficiency and present their plan; the amount of bonds they are to issue and the rate of interest, the amount of preferred stock and the rate of interest, the amount of common stock and the rate of interest, and the expenses of promotion; and, upon the approval of the commission, the consent of the Nation will have been given only after the most careful scrutiny and consideration and the genuineness of the whole transaction viséed by the Government itself.

The bill also lays down a uniform method of taxation by the States, and 1 per cent of the gross receipts is set aside annually as a special fund in the Treasury of the United States for an insurance fund to the employees of the railroads against accident and disability. Dividends in any one year are limited to 7 per cent, except with the consent of the Interstate Commerce Commission, and any surplus goes to the betterment of the roads, to the insurance fund, or to a guaranty fund against future inadequacy of earnings, or to extra dividends, if the commission consents. In fixing rates and dividends, the Interstate Commerce Commission are directed to have regard, as far as possible, to the maintenance of the par value of the stock. There is a provision for the Interstate Commerce Commission to act as a board of conciliation in the settlement of disputes between the railroads and their employees on questions of hours and of conditions and compensation of labor. It is stipulated that there shall be no interference with the local police regulations of the States or with their regulation of purely State traffic or with the jurisdiction of the State courts.

We welcome, therefore, the national consideration of all these questions relating to the inland waterways because it opens up the greater question of transportation regardless of State lines by both rail and water, and because its very consideration will bring about a fuller exercise of the granted powers of the Constitution. It seems to me peculiarly fortunate that this question of the improvement of the inland waterways has come up and arrested public attention as it has done, because once public opinion is created, legislation will speedily follow. The whole question of transportation in all its branches will be opened up and intelligently discussed, and we may be able to incorporate in our legislation regarding the waterways some much-needed legislation relating to the national incorporation of carriers, whether by water or rail or both, and thus weaken the opposition of those who would prevent the coordination of the whole matter comprehensively by indicating to them that the national powers regarding interstate and foreign transportation will not be exercised piecemeal or with reference to the one class of transportation and not with reference to the other.

If a proper system were created, most of the evils now complained of would disappear. A system of transportation could be easily devised which would enlist the best powers of the National Government without infringing at all upon the powers of the States—one which would protect alike the railway investor, the railway employee, the shipper, and the public in their respective rights and at the same time protect the States in all their legitimate powers and change the hostility of the railways toward the waterways into friendliness and cooperation in the interest of the entire people.

Mr. ADAMSON. Mr. Chairman, I wish to place in the record an editorial from the Washington Post on "How railroads can raise money."

The CHAIRMAN. That insertion will be made.

(The editorial referred to is here printed in full, as follows:)

#### HOW RAILROADS CAN RAISE MONEY.

The national question of placing the railways of the country in the state of efficiency which the public interest requires is now claiming attention. The sooner this question is settled the better it will be for the railroads, railroad investors, and all business interests.

Fortunately the evolution which has taken place during the last 20 years in the relations between the people and the railroads and between the Government and these carriers has been in the right direction. While care has been taken of vested rights, the primary duty of carriers to serve the public efficiently and at reasonable charge has been impressed upon railroad managers.

The days of "the public be damned" have passed from railroad managements forever. The days of watered stocks, of profitable deals between officials at the expense of investors, of manipulation of one railroad by another, and of combines to extort excessive rates from patrons are rapidly coming to an end.

Much of the difficulty of obtaining capital needed by the roads comes from the unsatisfactory and unsavory dealings in the past.

The railroads need billions of dollars to extend their lines, enlarge their terminals, increase their rolling stock, and improve their roadbeds. Bankrupt Europe can not now provide this capital, and even if it could the people of this country who pay the freight are opposed to paying exorbitant commissions to foreign syndicates for floating loans. The railroads must raise their money in this country. They must place themselves unreservedly under Government control in every particular. They will then be entitled to full consideration and public confidence. The books will be open. The public will readily invest in standard railroad stocks and bonds when complete Government regulation is assured.

By eagerly seeking Government regulation, by complying with the laws seeking to insure economical and honest administration, by strictly enforcing a régime of open and square dealing with the people, the railroads can obtain all the credit they need.

The CHAIRMAN. I wish to make the further statement that the further cross-examination of Mr. Thom will also be postponed to a time to be fixed in the future.

Mr. ADAMSON. Did you make any statement about meetings this afternoon and night?

The CHAIRMAN. The committee will hold a session until 12 o'clock, and then take a recess until half past 3, and it is hoped we will reach a conclusion to-day.

Mr. ADAMSON. And after the recess we will go on and finish with these two witnesses?

The CHAIRMAN. Yes; we will proceed until we finish with these two witnesses.

Senator ROBINSON. That is, with their direct statements?

The CHAIRMAN. Yes.

Mr. ADAMSON. There will be no cross-examination at all at this time.

## STATEMENT OF MR. MAX THELEN—Resumed.

MR. THELEN. Referring just for a moment to the table which was inserted in the record of Wednesday's proceedings, showing the moneys available for dividends both in 1915 and 1916 on certain of the leading railroads, as selected by the New York Times, I have here now a copy of the *Annalist*, which is a magazine of finance, commerce, and economics, published by the New York Times, under date of December 4, 1916. In that copy there appears under the heading "An exhibit in railroad prosperity" the details of the table which I presented on Wednesday, showing the exact amount in dollars of gross operating revenues, operating income, and balance available for dividends on the common stock as to each of the railroads which are shown in the earlier table. The table is rather short, and, if I may be permitted, I should like to submit that table as supplementing the other and giving the details.

MR. SIMS. Is this statement to go in with what you are reading now?

MR. THELEN. No; I do not care for the statement; I just want the table.

(The table referred to is here printed in full, as follows:)

*An exhibit in railroad prosperity.*

Company.			Operating income.		Balance available for common stock.		Earned on common stock (per cent.).	
	1916	Increase.	1916	Increase.	1916	Increase.	1916	1915
Union Pacific.....	\$104,717,005	\$17,758,709	\$40,823,536	\$10,643,430	\$34,807,394	\$10,384,775	15.6	11.0
Southern Pacific.....	152,694,228	22,828,553	48,189,971	12,500,357	30,885,254	10,314,935	11.3	7.5
Great Northern.....	81,262,478	14,069,620	32,216,197	6,511,279	27,600,614	6,982,344	11.1	8.3
Lehigh Valley.....	47,382,569	4,856,607	14,289,591	1,711,017	7,655,810	1,343,995	12.6	10.4
Central Railroad of New Jersey.....	33,462,928	4,720,673	12,333,033	2,542,084	5,972,572	660,394	21.7	19.4
New York, Ontario & Western.....	8,942,251	15,306	2,477,862	336,422	963,668	371,372	16.9	1.1
Chicago & North Western.....	91,313,865	10,534,190	24,606,706	4,722,802	15,274,341	4,355,947	11.7	8.4
Chicago, Milwaukee & St. Paul.....	105,646,483	14,211,109	31,261,194	6,544,242	8,109,206	4,250,130	6.9	3.3
Atchison, Topeka & Santa Fe.....	133,762,392	16,096,805	43,779,963	7,728,593	26,271,049	7,948,874	12.3	9.1
Illinois Central.....	69,077,342	6,965,790	14,155,087	3,276,614	11,807,564	4,948,403	10.8	6.3
Norfolk & Western.....	57,304,586	14,317,542	25,123,240	9,968,011	19,704,386	10,214,152	16.8	8.8
Chicago, St. Paul, Minneapolis & Omaha.....	19,522,562	1,681,214	5,535,335	821,448	2,214,879	3,794	11.9	11.9
Chicago, Burlington & Quincy.....	102,358,892	11,213,832	36,186,893	9,608,865	29,846,299	10,904,350	26.9	17.2
Hocking Valley.....	7,411,526	1,230,373	1,955,696	378,480	1,081,765	588,363	9.8	4.5
Mobile & Ohio.....	11,868,037	885,888	2,925,200	264,438	847,739	522,309	14.0	5.4
Alabama Great Southern.....	5,641,401	864,771	1,681,301	737,038	1,223,733	800,380	15.6	5.4
Buffalo, Rochester & Pittsburgh.....	11,971,018	2,491,083	3,072,101	758,014	932,820	512,820	8.9	4.0
Baltimore & Ohio.....	111,638,690	19,852,883	28,639,063	4,067,366	11,261,688	2,892,961	7.4	5.5
Louisville & Nashville.....	60,317,993	8,711,978	18,265,905	8,234,457	14,039,130	9,087,366	19.5	6.9
Southern Railway.....	69,997,675	7,796,166	21,004,005	8,603,951	6,333,989	7,733,341	5.3	.....
Chesapeake & Ohio.....	48,239,012	8,774,975	14,842,217	4,292,303	6,879,215	4,215,679	10.9	4.2
Central of Georgia.....	12,567,618	459,433	3,067,288	519,655	1,021,313	719,308	20.4	6.0
Kansas City Southern.....	10,583,630	547,734	3,659,918	677,158	891,716	591,285	3.0	1.0
Northern Pacific.....	63,171,652	12,767,578	21,588,493	8,904,696	18,822,820	6,907,053	7.6	4.8
Total, 24 companies.....	1,420,885,823	203,704,812	451,679,821	114,342,720	284,568,843	107,146,742	11.7	7.4

<sup>1</sup> Does not include Lehigh & Wilkes-Barre Coal Co. dividends of \$1,103,654 declared but not received owing to litigation.

<sup>2</sup> Decrease.

Mr. THELEN. There is also contained in the same issue of the *Annalist* a very short and interesting table headed "Drift of the business and financial tides," showing the percentage of changes last month as compared with a year ago in matters such as the cost of living, bank clearings, bank loans, steel orders, cotton spindles, etc.; also with reference to 230,447 miles of railroads, the gross earnings per mile, and net earnings per mile. The table shows that there has been an increase in gross earnings per mile by these railroads of 19.1 per cent and an increase of net earnings per mile of 25.8, and that this increase is greater than the increase shown as to any of the other items in the table, with the exception of three—the cost of living, steel orders, and foreign exports.

If I may be permitted, I would like to insert that table also. It is very short.

The CHAIRMAN. How much space will be occupied by these tables?

Mr. THELEN. They are very short. They will not occupy very much space.

The CHAIRMAN. Please eliminate all immaterial matter, as we wish to condense as far as possible. The table referred to will be incorporated in the record.

(The table referred to is as follows:)

*Drift of the business and financial tides.*

	Percentage of change compared with—	
	Month ago.	Year ago.
Cost of living <sup>1</sup> .....	+ 4.4	+ 41.9
Bank clearings <sup>2</sup> .....	+ 6.0	+ 17.0
New York bank loans (average).....	+ 1.4	+ 8.4
Price of 50 stocks.....	+ 0.7	+ 11.6
Commercial failures.....	+ 11.5	+ 31.6
Daily average pig-iron output (October).....	+ 9.3	+ 12.3
Car supply (Nov. 1).....	( <sup>3</sup> )	( <sup>3</sup> )
Steel orders (Oct. 31).....	+ 5.2	+ 62.4
Anthracite output (October).....	+ 5.9	+ 12.2
Bituminous output (September).....	+ 3.0	+ 0.9
Railroad earnings August (230,447 miles of line):		
Gross (per mile).....	+ 7.8	+ 19.1
Net (per mile).....	+ 14.8	+ 25.8
Cotton spindles (October).....	+ 0.6	+ 3.7
Foreign trade (October):		
Exports.....	+ 4.7	+ 46.6
Imports.....	+ 7.6	+ 18.8

<sup>1</sup> *Annalist* index number.

<sup>2</sup> 5 days last week.

<sup>3</sup> On Nov. 1, 1916, there was a net shortage of freight cars of 108,010, against a net shortage of 61,030 on Oct. 1, and a surplus of 26,239 on Nov. 1, 1915.

Mr. THELEN. In my judgment, gentlemen, the railroads are now suffering from a hysteria of pessimism. Although their earnings are greater than they have been at any other time in their history, and although those earnings are still going up, nevertheless the railroads seem to be engaged in the absurd task of trying to ruin their own credit. It seems to me that the time has come for them to remove themselves from the mourners' bench and to get out into the sunshine and attend to the business of running their railroads and of securing the additional cars, equipment, and facilities which

are urgently demanded by the new business which is constantly being offered to them.

On Wednesday, as you will remember, at the adjournment I was addressing myself to the proposition that under Federal incorporation the Federal Government would have the power to take from the States their powers even as to so-called police matters, in so far as carriers engaged to any extent in interstate commerce are concerned. In that connection I desire to refer, without reading, to one further authority, a very recent case decided by the Supreme Court of the United States, entitled "Seven Cases of Eckman's Alternative," to be found in 230 U. S., at page 510.

In that case it was urged by the owner of the property that it was not constitutionally possible for the Federal Government, even in connection with the regulation of interstate commerce, to enact any regulation which would interfere with the so-called police power of the States. The Supreme Court held squarely the other way, as they had held in a number of preceding cases.

As an illustration of what I mean by police regulations of the States, I may refer to a single case which I think will be illustrative. I refer to the laws of many of the States of the South with reference to separate coaches for whites and blacks. Those laws unquestionably are enacted under the police power of those States. I am absolutely satisfied under these authorities that the Federal Government, if it wants to, can hereafter, under a plan of Federal incorporation, take from the States the control over these matters in so far as every railroad which is to any extent engaged in interstate commerce is concerned.

The carriers tell us that at present they do not desire to go so far in any plan of Federal incorporation, and I refer to the matter merely on the question of legal power and not on the question of policy.

With reference to this general question of legal power, as far as Federal incorporation is concerned, I desire to leave with you my general conclusion that under Federal incorporation the Federal Government either will or may take away from the States all powers which the States have in connection with any railroad which is engaged to any extent in interstate commerce, and that, furthermore, this conclusion probably follows as to even purely State rates, State service, State facilities, and so on, if the Supreme Court of the United States follows the intimations which it has three times made in the cases to which I have referred. Of course, no one can tell absolutely until that question is squarely decided, whether the Supreme Court will follow those intimations or whether it will say that the reasoning of those cases is wrong, and that some better reasoning should govern. Nevertheless, those of us who are interested in the constitutional aspects of the question must squarely face those cases, because they are there—they stare us in the face.

Just a word, now, gentlemen, with reference to some of the aspects of Federal incorporation, apart from the legal questions which are involved. First, under that head what is the plan? As I understand it, the plan here presented by the carriers, in so far as they have presented it, is, in a nutshell, that it shall be provided by the Federal Government that after a day certain no railroad shall there-

after engage in interstate commerce unless it shall have secured from the Federal Government a Federal charter. This plan is to be compulsory, as distinguished from voluntary or elective. The consent of the States affected is not to be secured. It is not proposed initially to reduce the number of railroad corporations. If there are at present 6,000 railroad corporations in the United States, as was suggested the other day, then under this plan there will be 6,000 Federal railroad companies to take the place of the 6,000 State railroad companies, although there was a suggestion made that thereafter some arrangements might be made by which these railroads could, if they so desired, consolidate; but I think the attention of the committee should be drawn to the fact that, in the first instance, there is not to be a diminution in the number of railroad corporations. Furthermore, any advantages which the State railroad corporation at present has under its charter are to be retained to that corporation; but there is absolutely nothing said with reference to the advantages which the States may have under those same charters or with reference to the powers which the States may have reserved to themselves under such charters.

Now, with reference to a few special features of this plan. First, the purpose of the plan. The carriers come here with the avowed purpose to use the instrumentality of Federal incorporation to take away from the States practically all the power which the States have over their railroads. We must assume that the railroads will be diligent and persevering in carrying out their plan, and that through this agency they intend ultimately to accomplish their avowed purpose.

Secondly, stocks and bonds. Under this plan, as thus far presented, it is contemplated that the new Federal corporation shall take over the existing State corporation, subject to its entire indebtedness, so that there will be no diminution in the amount of bonds or in the fixed obligations.

Furthermore, it is contemplated that the new Federal corporation shall issue to the stockholders of the existing State corporation shares of stock equivalent in amount to the entire outstanding stock issue of each of these State corporations. If there is any water in that stock the water is to be perpetuated, not by permission of the Federal Government but by compulsion of the Federal Government. Let us look into this matter just a moment. The Federal Government says to each of these State railroads: "You can not go on doing interstate business unless you do what we tell you; you must take out a Federal charter, under a certain plan which we now prescribe, and one of the elements of that plan is that the new Federal corporation must issue to the shareholders of the State corporation capital stock equivalent in amount to the outstanding capital stock of the State corporation." Therefore, we have a situation in which the new securities will be outstanding under force and compulsion of the Federal Government and not as a matter of choice.

Gentlemen, is this the real purpose of their plan of Federal incorporation? Are they trying to establish, through direct compulsion by the Federal Government, an amount of securities which they will later use, not merely for the purpose of claiming higher rates but also, when the Government comes to take over their property, for the purpose of securing higher values for those properties?

That is a matter of most serious and momentous consequence, and I am certain that each member of the committee will give the most careful consideration to that part of their plan.

I want to add at this point that, entertaining, as I do, the most profound respect for the witness who testified here on Thursday, Hon. William J. Bryan, and although agreeing to some considerable extent with the views that he expressed, nevertheless, it is entirely impossible for me to agree with his contention that justice will be done to the railroads if the securities are scaled down to the point of estimated reproduction cost, new, of the railroads. All railroad commissions which have had experience in their various States know that there is many and many a railroad which, either because of lack of wisdom in its construction or because the traffic which it was built to serve has diminished, or for some other reason, is not worth anywhere near the cost to reproduce that railroad new. I have in mind a case to which I shall refer a little more in detail later—a railroad incorporated under the laws of California, which cost something over \$81,000,000 to construct originally, which would cost more than that to reproduce to-day, which issued \$75,000,000 of bonds, \$75,000,000 of stock, and about \$25,000,000 of other indebtedness, and which, the other day, was sold at a receiver's sale for \$18,000,000; and on the basis of the earnings of that road now and prospective, that is all the road was worth. Now, if in that case you say that the fair value of the property is its cost to reproduce it new, you are saying something which, commercially and legally, I say is not true; so I suggest that very careful consideration be given to that point in working out the problems which are now before the committee for consideration.

The suggestion of the carriers that this particular difficulty may be met by issuing stock without par value, although it sounds well, in my opinion does not solve the problem at all. One of the great difficulties financially in which many of the railroads to-day find themselves, is that the bonds were sold at a discount and that the moneys put into the railroad were secured solely from the bonds which were sold to the public, the railroad financiers and executives themselves putting in none of their own money, by the purchase of capital stock. In addition, large amounts of capital stock were issued without any consideration. Now, what is the situation? We have, in the first place, in such cases very little, if any, equity left, over the fixed obligations, to represent the stock. We have either no equity at all, or only a very small equity against a very large amount of stock. Merely issuing stock without par value is not going to increase by \$1 the amount of the outstanding equity available for the stock; neither will it increase by \$1 the earnings of the railroad. It will absolutely not solve that problem. It will not make it easier for the railroads to finance themselves, as they claim they should be, and as we know they should be. So that my thought with reference to that particular proposition is that it will not solve the problem at all.

Third, litigation. I have already referred to the very large amount of litigation which inevitably must ensue, in case this plan of the carriers for Federal incorporation is put into effect. I shall not go into the matter further, but suggest it at this point.

Fourth, the necessity. What is the necessity for this Federal incorporation plan? Counsel for the railroads has frankly admitted that it is possible for Congress to do everything under the commerce clause without Federal incorporation which they can do with Federal incorporation. Then, why the necessity of going into this matter? Why the necessity of doing something which apparently is not of prime importance, but which, nevertheless, will create all kinds of dangers and difficulties?

Finally, under this head, the ultimate effect of the plan. The carriers in proposing this plan say that they will surround their Federal incorporation with many qualifications, limitations, and reservations of power, so that the States shall be secure in those powers which should remain to the States. But, gentlemen, this Congress can not bind the next Congress, nor the Congress after that. It might be very easy, even though a statute were now passed containing all these qualifications reserving power to the States to have the next Congress come along and take a pencil and strike out half a dozen words or so, and absolutely undo what this Congress might have intended. If the door is once opened, I believe, gentlemen, it will be very difficult to close it later.

Bearing in mind the avowed purpose of the carriers to use this instrumentality for ultimately taking away from the States practically all their powers over railroads, I think it is not difficult to look ahead just a little into the future, and to see how when once the backbone or framework of this law has been prepared and passed, and when the States have been relieved of their power under their own charters over these railroads, it will be very easy later, when you who understand the situation may possibly be in other fields of activity, and when others who may not be so familiar with the situation may be here to have the plan put over completely.

Gentlemen, it is not for me to suggest to you what course should be pursued in this matter. It is my duty simply to present to you the facts as I see them, and it will be for this committee and this Congress to take such action with reference to Federal incorporation as you believe to be wise and patriotic. This concludes what the national association desires to present at this time on the subject of Federal incorporation.

I shall address myself now to the general claim of the carriers that their impaired financial credit has been caused by public regulation, and particularly regulation by the States. I listened attentively to Judge Thom's very able argument, hoping that he would present some detailed facts in substantiation of his general claim that the action of the States has impaired the financial credit of the carriers. Thus far I have listened in vain. We have, thus far, nothing but the general charge that the claim made is true.

If I may analyze and dissect the argument just a moment, it amounts to this:

First proposition, regulation of the railroads by the States is a fact.

Second proposition, impaired railroad credit is a fact.

Conclusion, therefore regulation by the States has caused impaired railroad credit.

Gentlemen, that is as clear a case of logical fallacy as I have ever run across. If you find two facts existing side by side contempo-

ranefully and you want to show that one fact is the cause of the other, it is not sufficient to make the general assertion that that is the case, but it is necessary to go further and to present convincing evidence to show that the casual relationship actually exists and that some other fact may not be the cause of the particular fact whose cause you are trying to ascertain.

In this particular instance we claim that the railroads have made an entirely wrong analysis of the situation. We claim that the facts which they say are the cause for their impaired financial credit are not the cause at all, and we claim further, and hope that we of their impaired financial credit, in so far as it exists, is something to which they have not called to attention at all. When we examine the real causes, we shall do so by reference to page and volume of the record, and hope to satisfy you on that point.

The first thing which the railroads, the boards of trade, the chambers of commerce, the bourses, and others who are working with the railroads say in this matter in their speeches, addresses, lectures, orations, newspaper articles, magazines, and other sources of publicity is always to refer to the 49 masters.

Now, gentlemen, I took this matter seriously when I first heard of it. I at once examined the railroads in California to find out how many of them were subject to 49 masters. I found that of 61 steam railroads in California 56 run exclusively in the State of California, so that as to those 56 there are only two masters, one the State of California and the other the Federal Government, instead of 49 masters. Going further, I found that of the other five railroads which run beyond the State of California, three of them run through three States, whereas two of them—the Southern Pacific and the Santa Fe—run through 10 or 12 States; and I found, gentlemen, that the Southern Pacific and the Santa Fe, which run through the most States and which are subject to the most masters, are the most prosperous.

I then went further and assiduously examined all the railroad maps which I could find, both in California and here in Washington, trying to find the railroad which has 48 masters. I must say to you frankly that, although I have tried perseveringly, I have not as yet found the railroad which runs through 48 States. In fact, the most States through which any railroad runs, as far as I have been able to find, is 15 or 16. But after I had gone thus far I was told after all not to take this matter too seriously; that this language about the 49 masters is simply language to tickle people's ears; that everybody who uses the language uses it in that sense; and that it is not necessary to give any further consideration to that matter. So, with considerable relief, I pass it on.

Judge Thom, in his very able argument, presented to you persuasively what I believe to be, although interesting, a very novel theory. He termed the theory "A right of the States." Concretely, that theory amounts to this: That the State of Georgia has the inherent, constitutional right to have the Federal Government come along and take away from the State of Alabama all the powers which the State of Alabama has over her own railroads, because the State of Alabama might use those powers so as to hurt the State of Georgia. And, conversely, that the State of Alabama has an equal constitutional right to have the Federal Government come

along and take away from the State of Georgia all the powers which the State of Georgia has over her railroads, because, forsooth, the State of Georgia might do something to injure the State of Alabama. Now, we have taken care of Alabama and Georgia. We have the powers of both those States in the Federal Government, and, then, by extending over the Nation, the argument proceeds that every State of the Union has the inherent, cherished, constitutional right to have the Federal Government come along and take away from that State its power over its own railroads. That, in a nutshell, is what this argument boils down to.

I am somewhat consoled by the fact that nowhere in the decisions of the Supreme Court of the United States, from the beginning of this Nation to the present time, has any member of the Supreme Court ever held that by reason of any such argument the Federal Government has the right to step in and take away from every State of this Union its power to regulate its railroads. This cherished right, this constitutional right, slept like the fairy princess of the days of old, on and on from the foundations of the Government until, on June 25, 1915, there was delivered from the State Bar Association of Tennessee, at Chattanooga, a very able and interesting address by Alfred P. Thom, the discoverer of this theory, and the fairy princess was then for the first time revealed to an astonished world. As I say, gentlemen, my only solace is in the decisions of the Supreme Court of the United States. That court has never held, and, in my judgment, never will hold, that that theory is sound.

I have been very much interested by the position here taken by the carriers that their every act is in the public interest. They come here as the champions of the public. I do not quite understand, if that is true, where the representatives of the people of the States, who hold official positions in the States and who assumed they had the right to speak for the people of the States, stand. I never like to see a man's hopes raised higher and higher, and then see them suddenly dashed to the ground. I always have a kindly feeling for a man of that kind, and I have a kindly feeling for the counsel of the railroads here, and I do not want to see his hopes dashed to the ground. I want to say at this time, publicly, so that all men may understand, and so that there may be no false hopes for the future, that the counsel for the railroads is not under pay from the public; that there is no implied assumpsit on the quantum valebat basis, or any other basis, by which hereafter counsel for the railroads can hope to receive a retainer from the representatives of the public for what he is doing before this committee "in the public interest."

Just a word, now, gentlemen, as to certain general charges which have here been made against the States. The first charge is that the States cut railroad rates down to the point of confiscation, and that that is the cause of impaired railroad credit. It is somewhat difficult, when one bears in mind that only 15 per cent of all the railroad traffic in the country is State traffic, to conclude that the mere difference between the point of confiscation and a reasonable rate would be sufficient to plunge these railroads into their financial difficulties. In this respect, gentlemen, as in all others, we call for a bill of particulars. We call upon the railroads to show by page and volume of the record where States have cut rates down to the point of confiscation. So that the matter may be perfectly clear

and that there may be no misunderstanding, and illustrating what I mean, we ask the railroads to take my own State—the State of California—and to go through every decision which the Railroad Commission of California has rendered with reference to railroad rates, and to point out, not in generalities, but by specific reference to page and volume of the record, where we have ever reduced railroad rates to the point of confiscation, and then let them do the same for the other States of the Union.

So far as my own State is concerned, although we have reduced railroad rates there to the amount of about two and one-half million dollars a year, those reductions have been accepted by the carriers as being just and reasonable.

It is here urged that the States are everlastingly bickering among themselves and that they have a habit of reducing their own rates so as to discriminate against interstate rates. Gentlemen, if that is true, it is a condition that ought to be remedied. The Supreme Court of the United States has remedied that condition in the Shreveport decision. We shall have more to say later about the Shreveport decision, but my only thought at present is to suggest to you that that particular situation has been taken care of by the Supreme Court of the land, and that it is not necessary to give further relief in that connection.

Referring again just for a moment to my own State—we all of us apply these generalizations to the specific facts of which we have knowledge so as to test them—in that State within the last five years, although many changes have been made by order of the commission in railroad rates, there has only been one single instance in which it was even suggested that an order of our commission discriminated against interstate commerce, and in that case those who made the suggestion did not go into court, and the rates are now in effect.

With reference to security issues, certain cases have here been cited—three of them, I believe—in which it was alleged that the States had acted unwisely or unfairly in connection with security issues. I am not familiar with the facts of two of those cases, but I will say this to you, gentlemen, that if there is anything wrong in the regulation by the State of security issues, we are willing and anxious that it be made right. In fact you will find the commissioners of the various States of the Union among the strongest advocates of action by the Federal Government in this field of security regulation. It is true that many of the States have entered this field, but we have done so because the Federal Government did nothing. In the absence of action by the Federal Government, many of the forward-looking and progressive States of the Union have done what they could in their way to prevent further excessive issues of securities and to see to it that the public interests are protected in consolidations, mergers, leases, and so on.

Whatever action, in the judgment of this committee and of this Congress is necessary in connection with control of security issues by the Federal Government, whether it is concurrently with the States, or whether it be exclusive, in my judgment, ought to be taken, and when that action is taken, no one will applaud the action more heartily than the commissioners of the various States of the Union, because we think it ought to be done.

Gentlemen, in view of the charges the railroads have here made against the various State commissions, in view of the intimidations that the State commissioners are not acting wisely; that they are not acting honestly; that in certain cases they have been narrow; that they have been selfish; that they have been bickering; that they have been unpatriotic, we feel that frankness with this committee requires that we present to you a few pictures of some of the typical State commissions of the country actually at work, so that you can see what work they do and how they do it, and that you then will be better able to judge whether that kind of work by that kind of commissions ought to be left to the various States of the Union.

As the first bird's-eye view which we shall submit, and I shall do it in an unskilled and sketchy way, I desire to present to you, gentlemen, the picture of the Railroad Commission of California in action.

The Railroad Commission of California was created by the constitution of 1879. At that time it had three members who were elected from three separate subdivisions of the State. Their terms were for four years. By the constitution itself the commission had power to establish the rates of railroads and to supervise their systems of accounts. Practically nothing was done between 1879 and 1911, for reasons which, I think, it is not necessary to go into at the present time. They are a matter of public history. But in 1912 adequate regulation and supervision of railroads and other public utilities of California commenced. The constitution was amended so as to provide that the commissioners shall be appointed by the governor and that their terms of office shall be six years, one going out at the end of two years, two at the end of four years, and two at the end of six years, with six-year terms thereafter, so that there shall be continuity in office.

The public-utilities act was passed under these constitutional changes. That is the act under which the commission exercises its authority. The public-utilities act defines the classes of utilities which shall be subject to control by the railroad commission. These classes include railroads, both steam and electric; street railroads; express companies, car companies; pipe-line companies; water, gas, electric, telephone, and telegraph companies; water carriers; wharfingers; and warehousemen.

The commission has no authority over publicly owned utilities, nor has it complete authority in some of the cities of the State with reference to privately owned utilities.

During the year ended June 30, 1916, the following utilities of various classes filed reports with the commission. I go into this matter simply so that you can see the scope of the commission's work:

Steam railroads, operative.....	48	Gas and electric companies.....	17
Steam railroads, lessor.....	13	Telephone companies.....	114
Steam railroads, under construction.....	4	Telegraph companies.....	3
Electric railroads, operative.....	35	Telephone and telegraph companies.....	7
Electric railroads, lessor.....	2	Water companies.....	329
Express companies.....	3	Warehousemen.....	183
Car companies.....	2	Wharfingers.....	13
Water carriers.....	18		
Electric companies.....	91	Total.....	917
Gas companies.....	35		

Over these various classes of utilities the railroad commission exerts complete and adequate authority. It has power to fix their rates, their rules, and their regulations; to regulate the quality and standards of their service; to regulate their equipment and their facilities and the safety of their construction and operation; to examine and prevent accidents; to regulate their systems of accounts; to regulate the issue of stocks and bonds and other securities by all these classes of utilities; to regulate their sales, leases, mortgages, consolidations, and encumbrances; and to pass on applications for certificates of public convenience and necessity. With reference particularly to the railroads, the commission, in addition to these general powers, has specific power to establish joint rates and through routes; to secure reasonable facilities for the prompt and efficient discharge by the railroads of their duty with reference to the transfer of passengers, freight, etc.; to require the construction of physical connections between various steam railroads and between steam and street railroads; to order the construction of interlocking plants; and to pass on all matters affecting the safety of grade crossings.

With reference to the organization of the commission, the commission consists of five members, as I have indicated. For the efficient discharge of its duties the commission has provided various departments. There is the secretary's office, which attends to the general office work; the legal department, which handles all the commission's cases in court; the rate department, consisting of a rate expert and assistant rate experts, who are trained in the construction and operation of railroads and express companies, water companies, and other common carriers; the engineering department, a very large department, consisting of a chief engineer and a number of assistant engineers, who have control not merely over all engineering matters referring to the railroads but also engineering matters, rates, service, etc., of gas companies, electric companies, telephone and telegraph companies, and water companies. We have an auditing department, which supervises the annual reports of the various utilities, audits their books, and prescribes classifications of accounts. Our stock and bond department, one of the most important of all, has control over the issues of securities by all the various classes of utilities. Finally, we have a reporting department, consisting of a chief reporter and four assistant reporters.

Gentlemen, after these preliminary words, I come now to the actual work done by the commission and the manner in which it is done. The proceedings before the commission are roughly grouped into informal proceedings and formal proceedings. The informal proceedings are those in which some one complains of some action of a utility and makes his complaint either verbally or by letter. They are the cases in which there is no public hearing. For instance, a letter comes in complaining that there are no lights in a certain railroad depot; that the toilet facilities of some railroad depot are out of order and are not being attended to; that a certain grade crossing is unsafe and that some one was killed there, or was in danger of being killed just a few days ago; that certain trains do not make proper connections; that this particular passenger was left out at a meeting point, simply because one train pulled out before another came in—hundreds of matters of that kind.

How are these matters handled? They are handled, where possible, personally by the particular department affected, either personally or by phone. If that is not possible, they are handled by letter. In many cases we send our experts on the ground promptly, so as to interview the parties and get the matter disposed of. During the year ended June 30, 1916, the Railroad Commission of California disposed of 3,212 informal complaints. Of those 687 affected steam railroads, 80 electric railroads, 42 express companies, 32 water carriers, 653 electric companies, 279 gas companies, 704 telephone and telegraph companies, 669 water companies, 33 warehousemen, and 3 wharfingers.

I shall refer simply to the steam-railroad informal complaints and indicate to you the general character of those complaints. Two hundred and seventy-three affected rates, 218 refunds, 130 service, 26 railroad crossings, 2 rules and regulations, 3 safety of structures, 31 loss and damage, and 4 violations of law.

Without going further into these informal complaints, I pass on hurriedly to the other class of proceedings, which are classified as formal proceedings. Those are proceedings in which a formal complaint is filed against some utility or in which the utility makes formal application for authority to do some act, such as to issue securities or make a railroad grade crossing, or something of that kind. In these proceedings hearings are held. These hearings are held generally before a commissioner. He goes on the ground. If the trouble is in San Diego County, in the southern part of the State, he goes to San Diego County, and if the trouble is in Humboldt County, in the northern part, he goes to Humboldt County, so in each instance the people in the community affected can be present and can see what is going on and express their sentiments. Furthermore, these hearings are very promptly set. It is one of our chief aims, in conducting the work of the commission, that these matters be promptly heard and promptly disposed of. The findings of fact of the commission are conclusive. There is a direct review provided to the State supreme court. In a number of instances reviews have been taken to the State supreme court, but as bearing on the question of whether or not the action of this State commission has been fair or unfair. I desire to draw attention to the fact that over 99½ per cent of the decisions of the Railroad Commission of California in formal cases have gone into effect promptly, without any court action whatsoever.

We think that may be fairly taken as indicating the point of view of the public utilities themselves, as to whether or not they are getting a square deal from the State. I venture the prediction that if other States will analyze their decisions, as I have analyzed ours, you will find a very similar condition existing. In fact, gentlemen, during the last five years there have been appeals taken by the railroads in only three cases in California. In one of those cases the appeal was taken in the Federal court. We went there promptly and demurred and had the matter heard in four days. The court sustained the demurrer of the commission without leave to amend, and that ended the matter.

There are two other railroad cases now pending in the supreme court, not involving rates, however. I will say, as far as rates are

concerned, that no order of the Railroad Commission of California has been overturned.

Have the utilities prospered, or have they not, under public regulation in my State? In connection with that matter I desire to draw your attention to the investments which have been made in California during the years 1913 to 1915, inclusive, under public regulation. I shall not read the odd dollars. I shall just read the millions:

Steam railroads.....	\$55,000,000
Electric railroads.....	16,000,000
Electric companies.....	56,000,000
Gas companies.....	10,000,000
Telephone companies.....	46,000,000
Water companies.....	7,000,000
	<hr/>
	190,000,000

Including certain classes of utilities, not here specified, the general result is that during those three years, under adequate and efficient regulation by the State, there has been invested by the public utilities the sum of \$200,000,000 in public-utility properties in the State of California.

The CHAIRMAN. What amount?

Mr. THELEN. \$200,000,000, Senator. Now, as to railroad mileage: I have here a table prepared by the auditor of the California commission, at my request, which shows that from June 30, 1911, to June 30, 1916, there were constructed in the State of California, under regulation by the State railroad commission, an additional railroad mileage amounting to 1,289.85 miles. Furthermore, that in the year ending June 30, 1916, there were constructed 200 miles of new railroad. Our railroad friends tell us that in the year ending June 30, 1916, in the entire United States, only 1,000 miles of new railroad were constructed. If that is true, California, under as adequate State regulation as any State in the Union, claims the honor of one-fifth that mileage.

Furthermore, gentlemen, while we still hear ringing in our ears the eloquent words of counsel, saying that railroad construction has stopped in the United States because of State regulation, railroad builders in California are building railroads under State regulation. I have here a telegram from the Railroad Commission of California referring to railroads which are now under construction in the State of California, under State regulation, and I quote from that telegram:

The following roads under construction in California:

1. California Southern, 30 miles, \$600,000. The dollars in each instance represent the estimated completed cost of the railroad.

Next, Patterson and Western, 36 miles, \$720,000.

Next, Hetch Hetchy, 67 miles, \$1,800,000.

Next, Fresno Interurban, 16 miles, \$230,000.

Next, Tidewater Southern, 12 miles, \$190,000.

Next, Minkler Southern, 15 miles, \$1,800,000.

Next, Visalia Electric, 20 miles, \$800,000.

Next, Los Angeles and Salt Lake, commonly known as the Salt Lake, 4 miles, \$250,000. That includes very extensive purchases of property and overhead construction.

Next, Indian Valley, 21 miles, \$325,000.

Making a total of 221 miles and a total of \$5,715,000.

Now, then, gentlemen, to my mind this is proof conclusive——

The CHAIRMAN. What is the total amount?

Mr. THELEN. The total amount, Senator, of mileage was 221 miles and the total amount of money involved \$5,715,000.

Now, if it is true that regulation by the States stops railroad construction, why has not railroad construction in the State of California stopped? We see the construction which is actually going on there. I think the inevitable conclusion must be that there is some other cause than State regulation which is responsible for such a cessation of railroad construction as exists in various sections of the Union.

Since I came here I have received newspapers from San Diego County, in the southern part of our State, referring to the fact that another railroad is about to be completed. This railroad is known as the San Diego & Arizona Railroad. It is to be built from San Diego eastward, partly through Lower California, thence back into the State of California to Arizona. For some time, due to the war in Europe, which shut off the source of money supply, this railroad has been in a period of cessation of construction, but, according to these newspaper reports, which are substantiated by word from my own commission, the completion of this railroad has now been financed through the Southern Pacific Co., one of our California lines, and 40 miles, being the intervening gap, will now be completed at an expenditure of \$5,000,000 of additional money.

In the old days of the seventies railroad men dreamed a dream of the Texas Pacific Railroad, to be constructed from Texas westward to tidewater at San Diego Bay, in California. During an absence of regulation that dream remained a dream. But to-day, under regulation, that dream will come true and finally the last link in that railroad from Texas to San Diego, Cal., will be completed under regulation by the Railroad Commission of the State of California.

It is my desire now to take the four leading interstate railroads of California and to point out to you what the specific effect has been on these railroads of regulation by the Railroad Commission of California.

Before passing on, however, to the consideration of each of these four railroads, I desire to draw your attention to the extent to which railroad depots have been built in California, again, under State regulation. During the last few years, subsequent to January 1, 1911, a total of \$2,105,000 has been invested by the railroads in California in the construction of new depots. The Santa Fe has built a beautiful new depot in San Diego costing \$300,000. The Southern Pacific has built magnificent depots in San Francisco costing \$1,000,000 and in Los Angeles costing \$690,000. Other smaller depots have been built in various sections of the State, principally under order of the railroad commission.

Referring now to these four interstate railroads and to the effect of regulation by the State on their prosperity:

First, the Southern Pacific Co. That is our largest railroad. It has a mileage in California of 6,302.53, being approximately one-half of the entire railroad mileage in the State.

Gentlemen, I want to present to you two pictures. I want you to contrast those pictures and then to say whether it is true that State

regulation is carried on in a spirit of punishment or in a spirit of vindictiveness. For over 30 years the Southern Pacific Co. corrupted the political life of the State of California. It controlled the Republican Party and it controlled the Democratic Party. It elected our governors, our legislators, and our judges. It held the State in abject political thralldom. No young man of ideals who desired to go into public life in the State of California could do so unless he swore allegiance to the Southern Pacific political machine.

Finally, in 1911, a number of men of ideals in the State, mostly young men and largely graduates of our State university, decided that the time had come to put a stop to that sort of thing. Led by the man who since then has become governor of the State, these men waged the hottest political fight that has ever been waged in the State of California, and they kicked the Southern Pacific Co. out of politics. Since then the railroad has been out of politics and has attended to the business of running its railroad, and has done it mighty well.

That is the first picture. Now I want to give you a second picture. Less than three years after that the Southern Pacific Co. was before the Railroad Commission of California in a contest which involved its very life. The Union Pacific was trying to break apart the Southern Pacific and the Central Pacific in such a way as to break loose the tracks, the rights of way, the moles, and all other property of those two companies, the Southern Pacific and the Central Pacific being owned by the Southern Pacific. If they had been successful in that plan, the Southern Pacific would have been left to its southern route and the Southern Pacific's financial prosperity would have been very seriously interfered with and the railroad would have suffered the heaviest blow that it ever suffered in its entire history.

The matter came before the State Railroad Commission of California. It there developed that if this segregation into two distinct and separate parts were brought about that not merely would the Southern Pacific Co. have its life destroyed, or at least seriously threatened, but that the people of California would have to pay higher rates and they would have to endure poorer service because of the breaking apart of these railroad facilities. Gentlemen, the very men who only three years before kicked the Southern Pacific out of politics in the State of California at that time saved the Southern Pacific Co. The public officials granted the application, but with such conditions that the proposed breaking apart of the Southern Pacific system was not effected. The proudest day in the life of our State officials was when a number of officials of the Southern Pacific later came to the Railroad Commission of California and thanked the commission for having saved the railroad's life.

Is that vindictiveness? Is that done to punish? I will leave it for you gentlemen to judge.

Now, just one further illustration. When it came to drawing the public-utilities act in 1911 I had the very great pleasure of going over the United States and visiting the leading railroad and public-service commissions, so as to gather all the help we could from their experience and from their statutes, so that in the State of California we might enter upon this work in a constructive way, not to punish any railroad, but to provide for constructive and scientific regulation of

railroads and other public utilities. When that was drafted, what did we do? We sent a copy of it, before its introduction into the legislature, to every leading railroad and public utility in the State, and we said to them, "Gentlemen, this is the proposed statute. Now make your suggestions." We held public hearings, and at those public hearings the representatives of these utilities appeared before us and made their suggestions for changes in the statute. Many of those changes were made. The very night before that bill was finally introduced in the legislature, I remember very well a room at the capitol where at a long table there were seated about 60 representatives of railroads and public utilities and two representatives of the public at the head of the table. Again we went over the entire statute, paragraph by paragraph, and listened to their suggestions, adopting those which seemed good. The next day the bill was introduced. Is that vindictiveness? I dare say you could duplicate that experience in almost every State in the Union.

No, gentlemen, the States have not been vindictive. They have simply insisted that there should be adequate, efficient, and honest regulation of these public agencies which are of such tremendous importance of the people of the States. There has been no thought of vindictiveness except in the minds of some railroad representatives who, I fear, have not had the close and intimate acquaintance with the various railroad and public-service commissions throughout the United States which I think it would be well in their own interest if they could secure.

I desire to insert in the record a few figures showing whether or not the Southern Pacific Co. has prospered under regulation by these many masters. I have here a statement compiled from the annual reports of the Southern Pacific Co. showing the operating revenues of that railroad, its operating expenses, and its net operating revenue and its surplus for the years ending June 30, 1912, to June 30, 1916, inclusive. Without reading all the figures in detail, I will read them in round millions:

Operating revenues, 1912, \$90,000,000; 1913, \$95,000,000; 1914, \$92,000,000—that was an off year for railroads; 1915, \$97,000,000; 1916, \$115,000,000. Operating expenses, 1912, \$52,000,000; 1913, \$54,000,000; 1914, \$55,000,000; 1915, \$61,000,000; 1916, \$71,000,000.

Net operating revenues, 1912, \$38,000,000; 1913, \$40,000,000; 1914, \$37,000,000; 1915, \$35,000,000; 1916, \$44,000,000.

The surplus on June 30, 1911, was \$63,000,000. During the period ending June 30, 1916, this surplus increased to \$117,000,000. During this period, under State regulation by a number of those 49 masters, the Southern Pacific Co. not merely paid all its fixed charges, not merely paid full dividends on its stock, but also, in addition thereto, added to its surplus the sum of \$53,507,618.13. I do not believe that anyone can fairly say that under State regulation this railroad, with these many masters, has been injured.

Now, as to the Santa Fe. The Santa Fe is subject to 10 or 12 masters—I do not know the exact number. I believe it is incorporated under the laws of Kansas. It does a considerable business in California. As to the Santa Fe, without going into detail, I wish simply to draw your attention to one instance which I think is typical of the financial condition of that railroad. In November, 1915, the Santa Fe sold in New York \$10,000,000 of 5 per cent pre-

ferred stock at 98½. There you have one of these railroads, with its many masters, selling, not bonds but preferred stock—5 per cent preferred stock—at 98½. That fact alone, I think, is eloquent of the financial condition of the Santa Fe.

The CHAIRMAN. What year was that?

Mr. THELEN. That was in 1915, in November.

Third, the San Pedro, Los Angeles & Salt Lake Railway, now known as the Los Angeles & Salt Lake. That is what is known as the Clark Line. It was built by Senator Clark and runs from tide-water at Los Angeles through the States of California, Nevada, and Utah, to Salt Lake City. This railroad has had a hard time, due very largely to washouts in the State of Nevada several years ago. I never heard, Mr. Chairman, that those washouts were caused by the Nevada Railroad Commission. Notwithstanding those washouts, which necessitated a very extended reconstruction in the State of Nevada, the railroad is gradually pulling itself out. It is now building additional railroad mileage in the State of California and has further mileage under consideration. In that connection, when the reporter returns the telegrams to which I referred a few minutes ago, I desire to refer to additional railroad mileage which is now under contemplation in the State of California, including certain mileage by the Los Angeles & Salt Lake Railroad.

Fourth, the Western Pacific Railway Co. There, gentlemen, is a very interesting case and a very instructive case on the question of the real causes of impaired railroad credit. I am going to refer quite a little to this railroad, because I know of no railroad which presents a more interesting story of just why railroads have trouble.

The Western Pacific was one of the Gould Lines. It was constructed from Salt Lake City, in Utah, westward to San Francisco, in California. Gould wanted to have an outlet to the Pacific Ocean, so he built this line. As those of you who have traveled in the West know, throughout almost its entire extent this railway parallels the Southern Pacific Co. In fact, all through Nevada a strong man with a good right arm could take a stone and throw it from the Southern Pacific right of way to the Western Pacific right of way. There was no economic necessity for the construction of this railroad. The Southern Pacific was handling the business. The Western Pacific tapped no new territory. It had no feeders. It went into none of the productive valleys of the State of California. It was simply a string stretched across the intervening distance between Salt Lake and San Francisco, paralleling the Southern Pacific.

What was the result? The inevitable result. Of course that railroad could not make good. The railroad cost \$81,869,254. There were issued against it \$75,000,000 of bonds, \$75,000,000 of capital stock, and \$25,000,000 of other indebtedness. The railroad, of course, started in earning deficits the first year, and continued to do so regularly during the succeeding years. The net corporate loss in the year ending June 30, 1912, was \$3,281,972.87, and that loss continued in each of the succeeding years. Finally the inevitable crash came. The Denver & Rio Grande, which had been guaranteeing the payment of interest on the bonds of the Western Pacific, refused longer to be burdened with that payment and refused to pay the interest obligations which were due on March 1, 1915.

Receivers were appointed and we had the usual receivership proceedings. The road was sold on July 1, 1916, to its bondholders, for the sum of \$18,000,000. At that time the railroad was earning about \$1,000,000, applicable for interest on bonds and for dividends on stock, and \$18,000,000 is practically all that road was worth as a business proposition.

Here, gentlemen, you have a receivership. You also have State regulation. Does it, therefore, follow that State regulation caused the receivership? That argument is just as logical as some of the other arguments which the railroads have been presenting. The fact is, gentlemen, as far as I can remember, that the Railroad Commission of California never reduced a rate of the Western Pacific. As far as I know, the State of Nevada did not do so. The State of Utah has no commission, therefore could not have done so. Nevertheless, the railroad was a financial loss. Here you have a clear case, gentlemen, of one of the causes of impaired railroad credit. It is the case of a railroad which is constructed where it is not justified. In cases of that kind you have not merely that particular railroad going into the hands of a receiver, but you have that railroad subtracting from the revenues which are justly due the competing line, and to that extent you injure also the competing line. In this particular case, the Southern Pacific was strong enough to stand the competition, but in other cases the competing railroad has not been strong enough.

Now, let me finish the story of the Western Pacific. When it came to the reorganization, the railroad applied to the Railroad Commission of California—it is a California corporation. The stocks of the railroad are now subject to regulation by the State, and we also exercise jurisdiction over the bonds in so far as they affect California. We insisted that the railroad reorganize in such a way that it would have a chance. We insisted that its organization should be on sound financial lines, and not on unsound financial lines, because if we had let the matter go as it had gone in the past it would only be a number of years before we would have another railroad crash. There was issued in exchange for all the outstanding securities of the Western Pacific, common and preferred capital stock amounting to about \$75,000,000. There were no bonds authorized except for new additions, extensions, and improvements. We authorized the issue of \$20,000,000 of new bonds for extensions, additions, and improvements. So we have this railroad starting on its new career with only the fixed charges on the bonds which were to be issued to pay for additions, extensions, and improvements. If dividends are earned on the stock, well and good. If they are not earned, the railroad, at least, does not again go into the hands of a receiver. There you have, gentlemen, a clear case—a case of a railroad which went on the rocks, not because it was subject to State regulation, but for entirely different reasons. Finally, you have public regulation coming along and insisting that when that railroad goes out of the hands of the receivers, it shall have a fair start and a chance to make good. I think that is rather an interesting study in contrast between what happened before regulation and what has happened after and under regulation.

I just want to refer to a few matters which the Railroad Commission of California, as typical of other State commissions, has

done in order to help the railroads. The first thing we did was done against their will. We kicked them out of politics and we saved them hundreds of thousands of dollars every year by that act. Next we abolished the use of passes. I am credibly informed that the Southern Pacific Co. alone saves \$250,000 a year by reason of the abolition of those passes. Next as to legislation: When bills are introduced in the Legislature of California referring to public utilities, including railroads; those bills are generally referred to the railroad commission, and we are asked to pass judgment on them. We do so. If the bills seem to be detrimental to the carriers and to the other utilities and to the public, we recommend that they be not passed, and the legislature generally accepts our recommendations. In that respect, unquestionably, we have been of assistance to the carriers, and they deserve our assistance, because they are part of the public life of the State of California. With reference to relief from the operation of certain laws, we have granted relief to the railroads from the operation of the long and short haul clauses where water competition made such relief necessary. We have granted relief to them in connection with a statute known as the telephone train-dispatching statute, which was aimed at telephone train dispatching, but which allowed the railroad commission to specify the cases in which the statute should be applied. We were able to work out the matter in such a way that I believe both the railroads and the employees were entirely satisfied. With reference to car shortage: Every year when car shortage comes we send a notice to shippers, advising them to cooperate with the railroads, because they are just as much involved as the railroads are, and in that way I think we have been of assistance not only to the railroads but also to the shipping public.

We have allowed rate increases where they were justified. We are just as ready to do that as to insist on rate reductions. We have told the people of California this many times, and I think they approve of that policy. I think you will find, gentlemen, when the other State commissions present their story, that they will tell you that their attitude is no different in that respect from the attitude of the State Railroad Commission of California.

Whenever it is proper we allowed railroads to take off unprofitable trains. We allow them to take off caretakers of depots when the business does not justify their retention. We have allowed them in certain cases to abandon operations entirely.

We have worked with the railroads these last five years to have more consistent rate structures established in the State. I believe that any California railroad man will tell you that the public authorities of the State have been of very substantial assistance to them in that connection.

We are doing all we can to help the railroads in their campaign for larger minimum carload weights. That goes to greater efficiency of railroad operation, and in the long run, of course, reacts to the benefit of the public as well as the carriers.

Now, just one illustration. This is typical. Last spring we had very severe floods in San Diego County. The floods washed out not merely one of the existing dams but also, to a considerable extent, the railroad mileage in that county, including, among others, a considerable part of the railroad mileage of a railroad known as the San Diego & Southeastern Railway—an electric interurban line—

having one line out into the country east of San Diego and another line south of San Diego. That railroad had had a hard time even before the flood. The competition of the autobusses had severely affected the railroad revenues. They came to us after the flood and threw up their hands and said, "We do not know what to do; we do not believe there is any way we can reconstruct our lines and make them pay; we have had losses before the flood; we will have greater losses after." They asked us for our help as to what they should do, and the public authorities of the State sent down to that county two of the very best experts of the railroad commission, one of them our service expert, the other an engineer. They spent a month down there on the job, going over in every detail the construction and operation of that railroad, and then rendered their report to the commission as to what should be done. We were able to eliminate considerable railroad mileage whose operation was not necessary, and whose operation had proven expensive. We were able to show the railroad that by running the street cars from San Diego over this system, over the southern portion of it, they would save very considerably over what their expenses had been in connection with the operation of the heavy interurban cars. As to the other section of the road, the eastern section, we were able to show them that by putting on gasoline motor cars they would be able to operate far more economically than they had in the past operated by steam. The railroad took our advice. They did what we suggested to them, and to-day they are in a more prosperous financial condition than at any time in the last few years.

Other States, typical States, will present to you similar testimony hereafter, so that you can see what they are doing and how they are doing it, whether the work is being well done, whether it is necessary, and whether it should continue.

Our friends, the railroads, propose now to practically kill each of these State commissions, to take away from them all of their effective powers over the railroads, and to throw all of those powers into the lap of the Federal Government. It is my judgment, gentlemen, that the people of the United States will never stand for having the local administration of their local affairs taken away from their local representatives and transferred to the General Government at Washington. The carriers, I think, realize that attitude, and so they have tried to meet it in some way. How do they propose to meet it? They propose to create regional commissions. The first proposition was to create five regional commissions. The number has now gone up to 15.

When I speak of regional commissions, gentlemen, I hope that you will bear in mind the distinction which I make in my own mind between two classes of regional commissions. There is one plan to establish regional commissions, to enable the Interstate Commerce Commission to do more effectively the work with which it is now charged, and the additional work, such as stock and bond issues, which may later come to it. That is one kind of regional commission. I am not now addressing myself to that kind of regional commissions. The other kind of regional commission—and this is the kind which the carriers here advocate—is a regional commission the purpose of which shall be, after they have rooted out the State commissions, to take the place of that commission, to be superim-

posed from above for the purpose of doing the work which the local commission is now doing. It is to that kind of regional commissions to which I shall now address myself. How many shall there be? We have had the number go up from 5 to 15. The carriers, I believe, are not quite satisfied in their own mind as to whether 15 will be sufficient. Now, take my own State. I think, gentlemen, you will be convinced from what I have said that if the tremendous amount of work which the Railroad Commission of California to-day does in connection with railroads is to be transferred to the Federal Government it will be necessary to have one regional commission in the State of California. In other words, first tear up the existing commission and then superimpose on the State a new regional commission.

As to how many regional commissions there will have to be throughout the country I am not informed. Personally, I doubt whether 15 would be enough. Then they provide that the regional commissioners shall reside in the States. We are very thankful for that concession, but I think the people of California would rather run their own affairs, through their own commissioners, who do not merely reside here, but who have been raised with the people, than to have some commissioner superimposed upon our people from Washington, although he may reside in California. Frankly, I do not know just what is going to happen in some of the States of the Union, where the most of the brains and ability is in one of the political parties, if the other political party should be in the ascendancy at Washington. I fear it will be very difficult in some cases to find in some States representatives of one of the political parties in whom the public will have entire confidence and who will represent the best part of that community. If it is impossible to do that, it will be necessary for the Chief Executive to go to other States and find commissioners and ship them down to those particular States. I am very hopeful that if that is ever done we shall not have a repetition of our "carpetbagger" days.

Furthermore, gentlemen, it is not enough to have just three commissioners on this regional commission; it will be necessary for them to have their rate experts, their engineers, their auditors, their other experts. I think it is very clear, from the illustration which I have given of the work in California, that the commissioners alone do not do the work; it is necessary to have a large force of experts—men who can be sent out into the State at a moment's notice to solve these various situations. Hence, if this plan should be accomplished, it will not only be necessary to have regional commissioners for each commission, but, in addition thereto, a whole army of employees, all centered in the Federal Government at Washington. Suppose all these objections are overcome. There are still certain objections to this plan which are inherent in it and which can not in any way be overcome. The first objection inherent in the plan is that it is a government superimposed from above instead of being a government growing up naturally from beneath. There is no way that that objection can be met. The second objection is that this plan will be very detrimental to the poor man in the prosecution of his cases. At the present time, if there is complaint in any part of the State, we send a commissioner there; he hears the case; the complainant does not have to be represented by an attorney; if he has

not any attorney, we take care of him. If the railroad is not satisfied with the decision of the commission, it goes to the supreme court in San Francisco. It is relatively easy for people to come to San Francisco from various sections of the State.

If this plan of regional commissions is carried through, then there will be an appeal, not to San Francisco but to Washington, because it is to be provided under this plan that there will be appeals taken from the decisions of the regional commissions to a central body in Washington. It is very easy for the railroads to send their men to Washington, but it is mighty hard for a poor man who is on the other side to come to Washington or to send a man here. So that here, further, is an inherent difficulty which you can not get away from if you adopt this plan of regional commissions.

Gentlemen, in view of that situation, what is the use? If you become convinced before these hearings are over that the States are generally doing their work well, that they are generally trying to be honest about it, that they are generally animated by a desire to be wise in their actions and to be patriotic, what is the use? Why take away from them the work which they are now efficiently doing and throw it into the lap of a Federal bureaucracy? I will say to you also, gentlemen, that if the railroads had the intention of making all public regulation ineffective, they could not do it in any way better than that which they now suggest—first, to take away the powers from the States which are on the job; and, secondly, to overload the Federal Government in such a way that the Federal Government's regulation will break down. I hope that this is not their plan; but if it were their plan, the method suggested by them would be very effective to accomplish the purpose.

That completes what I desire to say at the present time with reference to this general question—whether or not regulation by the States has impaired railroad credit. I hesitate to put my judgment against that of men of the very considerable ability, well-paid men, whom the railroads employ, but I am absolutely satisfied that the railroads have made an entirely wrong analysis of the situation. Their impaired financial credit is not due to regulation by the States; it is not due to regulation by the Federal Government; but it is due to an entirely different cause or set of causes.

I propose now, as the third part of my argument or my presentation, to submit to you, by reference to official publications, the real causes of impaired railroad credit. I may say, by way of preliminary, so that you may see exactly what I am driving at, that it is my judgment that the real causes of impaired railroad credit, in so far as such credit has been impaired, are to be found in unwise railroad construction, in unwise railroad administration, not to say criminal railroad administration; and, furthermore, in excessive issues of securities; and, very particularly, in unsound financial structures which, in the very nature of things, can not produce in the long run constructive results.

Now, first, unwise railroad construction. I have already drawn your attention to the case of the Western Pacific Railway Co. That case is typical of other cases in which railroads are built where they should not be built. In those cases we have, ultimately, not merely a collapse of that railroad itself, but you have often very serious im-

pairment of the revenues and, consequently, of the credit of the competing railroads.

With reference to other situations, I said to you that I desired to quote from page and volume of official records. I believe that is a better way of presenting a matter than by mere generalizations. I shall try not to take longer than necessary, but there are certain paragraphs from reports of the Interstate Commerce Commission and other official records which I believe should be drawn to your attention.

I refer, first, to what is known as the "Harriman Investigation," which was conducted by the Interstate Commerce Commission under Commissioner Franklin K. Lane. This report will be found in the Twelfth Interstate Commerce Commission Reports, at page 319. I refer particularly to that part of the report which deals with the Chicago & Alton, and I read now, first, from page 337 of the report.

The CHAIRMAN. What volume is that?

Mr. THELEN. It is volume 12, Mr. Chairman, at page 319. I hope, gentlemen, that you will understand my purpose in doing this. My sole purpose is to let you see what the truth is. If it hurts, it is too bad; but, in any event, you are entitled to know the truth.

It would seem rather absurd if a man who apparently had a disease should come to you as surgeons and ask for relief, and if you should proceed to cut off his good right arm when, as a matter of fact, the trouble was with his liver or with his appendix. In this case, gentlemen, the railroads propose to cut off the good right arm of State railroad regulation on the plea that State railroad regulation has injured their credit, when the real trouble with them is acute gastritis resulting from an overdose of securities which they have not been able to digest.

Now, as to the Chicago & Alton, I read from page 337:

It developed during the inquiry that the Union Pacific Railroad Co. in the year 1903 became the owner of 103,431 shares of the preferred stock of the Chicago & Alton Railway Co., and the commission therefore deemed it important to inquire into the reorganization and capitalization of this company.

Prior to 1898 the Alton road had been for many years under the control of Mr. T. B. Blackstone, as president, and had paid an average dividend exceeding 8 per cent per annum and in addition had expended large sums out of earnings in the improvement of its property.

I refer to this as showing the condition of the railroad before the financiers and executives got busy on it. Now, on page 338, referring to the year 1898, it proceeds:

About this time Mr. Edward H. Harriman, Mr. Mortimer L. Schiff (representing Mr. Jacob H. Schiff), Mr. George J. Gould, and Mr. James Stillman formed a syndicate to buy this stock and bought it for \$200 a share for the preferred and \$175 a share for the common, making the total cost of the shares purchased \$39,042,200.

In about seven years, to June 30, 1906, the outstanding capital indebtedness of this company was expanded from \$33,951,407 to \$114,610,937, or an increase of about \$80,660,000, and there was expended in actual improvements and additions to the property out of this capitalization only about \$18,000,000, leaving an increase of its stock and liabilities, without one dollar of consideration, of about \$62,660,000, or \$66,190 per mile on the 946.66 miles of road owned by the company on June 30, 1906.

Then follows a heading, "How this was accomplished."

For the purpose of taking up the first-mortgage bonds on the road, amounting to about \$8,500,000, the making of improvements and additions, and for

other corporate purposes this syndicate placed a \$40,000,000 3 per cent mortgage on the property, which by its terms could be extended and bonds issued in addition to the forty millions.

I invite your attention, please, to the price at which these bonds were sold to these same men. They sold these bonds to the stockholders—and they were the principal owners of the stock—for 65 cents on the dollar, and as they had acquired substantially all of the stock they obtained nearly all of the bonds. Then there is a showing as to the amount of stock which they owned, and the commission then continues:

The first \$10,000,000 thereof were issued about October 10, 1899, and through the syndicate managers (Kuhn, Loeb & Co.) were sold to Goldman, Sachs & Co., who sold them to the New York Life Insurance Co. for 96 cents on the dollar. Only \$32,000,000 out of the \$40,000,000 were sold—

MR. HAMILTON. How soon after that purchase were those bonds sold?

MR. THELEN. These bonds were authorized, Mr. Hamilton, on September 7, 1899, and were sold to the stockholders on October 10, 1899; in other words, one month and three days later.

MR. HAMILTON. At an advance of how much?

MR. THELEN. At an advance of from 65 cents to 96 cents on the dollar.

Only \$32,000,000 out of the \$40,000,000 were sold, and the prices the syndicate received for the balance does not appear; but it does appear that Kuhn, Loeb & Co. sold \$1,000,000 thereof to the Equitable Life Insurance Co. in 1900 at 92 and \$550,000 thereof later at 88 in 1901; and the market value of the bonds during the years 1900, 1901, and 1902 varied from 82½ to 94, and has from that time to the present time varied from 78½ to 86½. So that the syndicate must have reaped a profit on these bonds of about \$8,000,000, which could have been and should have been reaped by the railroad company.

It is a case of where the financiers bled the railroad company. Some of those very financiers, gentlemen, are among those who are now most vociferous in their claims that the State railroad commissions have impaired railroad credit. On page 339:

Out of the 65 cents on the dollar thus realized by the railroad company the principal stockholders voted themselves a dividend of 30 per cent on the common and preferred stocks.

Voting a dividend from the sale of bonds! Of course, every man who has had experience in railroad finance knows that that is absolutely against every canon of proper finance. You can not vote yourself dividends out of the sale of securities. The only source from which dividends should be paid is from income.

The total dividend amounted to \$6,669,180, and as it appears they owned more than 98 per cent of the stock they received nearly all of it. This dividend was not reported to the Interstate Commerce Commission. There was no other money in the treasury, outside of the proceeds of these bonds, with which to pay a dividend.

Then, on page 340, the following:

Furthermore, instead of paying all of the coupons outstanding on the prior mortgage bonds and canceling them, as was contemplated when the \$40,000,000 mortgage was made, \$973,477 of these coupons were, from 1901 to 1905, carried as an asset in the treasury of the Alton Co., under the head of "Funded interest account," and on June 30, 1905, credited to assets and charged to capital account of the Chicago & Alton Railway Co.

In other words, we have here coupon bonds, which represent obligations to pay interest on bonds, added to capital account, thereby

swelling the capital account and apparently the assets of this particular railroad company.

The assets and the profit-and-loss account of the company were swollen by this transaction to the extent of \$973,477; thus, in fact, turning a debt or obligation of the company, which should have been paid and canceled, into an asset, and capitalizing the same.

Then just one or two more references to this railroad on page 341. Referring to the mortgage made by the Chicago & Alton Railway Co., the commission says:

This mortgage, made by the Chicago & Alton Railway Co., covering the stocks of the railroad company, also covered about 34 miles of prospective railroad which the company contemplated constructing and which it was authorized to construct under its charter and organization. But all the bonds were sold, and no bonds were left to raise money with which to construct the line thus contemplated.

Here, then, you have a case of apparently necessary railroad construction, which would no doubt be urged by the carriers in amplification of their claim that it is necessary to secure more funds for additional railroad construction, and through this financial hocus-focus the bonds which were to be used for this purpose were used for other purposes, and those 34 miles were not constructed. I am not sure whether they are constructed at this day or not; I can not say positively on that point; but at this time the funds which should have been used to construct that 34 miles of additional railroad were diverted to entirely different purposes.

So that when the new management took hold of the Alton on the 1st of October, 1906, it found that this line, in process of construction, had already been mortgaged, the bonds sold, and no funds reserved with which to complete the construction.

On page 343, under the heading of "Indefensible financing," is the following:

From this brief synopsis of the exploitation of the Chicago & Alton it is evident that its history is rich in illustrations of various methods of indefensible financing. First came the profit to the stockholders, arising out of the sale to themselves of \$32,000,000 of bonds at 65, which sold for several succeeding years for 82½ to 94. Second came the 30 per cent dividend, based on amounts expended from income for improvements, much of it nearly 30 years before and recently capitalized. Third came the pseudo-transfer to Stanton, and his contract under which the new company paid \$10,000,000 in cash for preferred stock which had cost less than \$7,000,000. Fourth came the conversion of 183,224 shares of common stock in the railroad company into 195,428 shares of common stock plus 194,890 shares of the preferred stock in the railway company, part of which was sold to the Union Pacific at 86½ a share. Fifth came the sale of the St. Louis, Peoria & Northern for \$3,000,000 cash. Sixth came whatever interest the syndicate may have had in the sale to Kuhn, Loeb & Co. of \$22,000,000 of bonds at 60 cents on the dollar. Seventh came the fee of \$100,000 to Mr. Harriman for financing the enterprise. This analysis is no doubt incomplete, but it is suggestive.

To continue, the Interstate Commerce Commission says:

We are told that the methods of the financing of railroads which has prevailed in the year 1900 are now obsolete, owing to a higher degree of conscientiousness among financiers, and, moreover, that the Chicago & Alton should not be regarded as an isolated instance, inasmuch as it was dealt with much as many other roads were at that period.

The first of these statements is, we trust, true; the latter statement is not calculated to uphold the value of American railroad securities.

So there the Interstate Commerce Commission intimates very clearly that transactions of this kind, being not calculated to uphold the value of railroad securities, must be regarded as among the moving causes of impaired railroad credit.

I have just two further paragraphs, gentlemen, which I wish to read. I believe I should draw your attention to the recommendations which the Interstate Commerce Commission made as a consequence of the exposures in this investigation. The third recommendation reads as follows:

The time has come when some reasonable regulation should be imposed upon the issuance of securities by railways engaged in interstate commerce. We are aware that in the construction of new lines of railway, developing new territory, it has been necessary in many instances to sell railway securities at large discount and to sell bonds with stock bonuses, and even in such cases it has many times been difficult to raise the necessary capital. Men will not invest their money and take the risk for small rates of interest.

But this principle does not apply to old established railway systems having good credit. Such railways should be prevented from inflating their securities for merely speculative purposes. Railroads should be encouraged to extend their systems and develop the country. It is of the utmost importance, also, that railway securities should be safe and conservative investments for the public and should yield good and ample return for the money invested.

Then comes their final suggestion:

Reasonable regulation will tend to make them safer and more secure investments, and thereby benefit not only the railway companies but the public.

It was suggested in the opening statement of counsel here that there will be bankers here from the Middle West to testify that the demand for railway securities in the Middle West is not as brisk as they would like to see it. Here, gentlemen, is one of the causes for that condition in the Middle West.

Next, I desire to refer to a report by the Interstate Commerce Commission headed: "In the matter of the receiverships of the St. Louis & San Francisco Railroad Co. and the Chicago & Eastern Illinois Railroad Co.," decision No. 5933, rendered on January 20, 1914, and to be found in Twenty-ninth Interstate Commerce Commission Report, page 139.

Some of the members of the committee are no doubt entirely familiar with this case. Nevertheless, in view of the fact that we have presented here an alleged cause of impaired railroad credit which we say is entirely erroneous, and in view of the fact that you have not had drawn to your attention the real causes, I think the record should show a reference to a few of these cases.

Senator ROBINSON. What is that case?

Mr. THELEN. The Frisco reorganization was decided on January 20, 1914, in response to a resolution of the Senate asking the Interstate Commerce Commission to make this investigation. On page 140, I read as follows:

Notwithstanding this apparent exhausted financial condition and inability to meet obligations without recourse to further borrowing, the Frisco sold to Speyer & Co., of New York, shortly before the receivers were appointed, \$3,000,000 of its general lien 5 per cent bonds, French series, at a price of 78. The dates of such sales were:

Apr. 24, 1913	-----	\$1,000,000
May 2, 1913	-----	1,000,000
May 10, 1913	-----	500,000
May 14, 1913	-----	500,000

3,000,000

This was just prior to the appointment of the receivers.

The sale of securities to the investing public through the bankers at a time when every appearance indicated the insolvency of the issuing company invites and warrants condemnation of all those who assisted or participated in such sale. Speyer & Co. should have been aware of the poverty of the Frisco and of its difficulties in obtaining funds, as they advanced that company on April 24 \$725,000 on its demand note and \$50,000 on its demand note dated April 29, and applied the proceeds of the sale of \$1,000,000 of these bonds on May 2 to the liquidation of these notes.

There, gentlemen, you have another case of impaired railroad credit. The sale by the railroad company, through its bankers, of additional securities to the public at a time when everybody should have known that the road was on the point of going into the hands of a receiver. We can well imagine that the people who bought these securities will be very slow to invest in other railroad securities. To that extent these railroad executives and these bankers have themselves created the impairment of railroad credit.

On page 142 the commission states its conclusions with reference to the insolvency of the Frisco in the following language:

The insolvency of the Frisco may be attributed to various causes.

First. Disproportionate capitalization.

May I pause just a moment on that, gentlemen? That is, to my mind, one of the most potent causes of the financial difficulties of these railroads. You have, frequently, the capital which goes into a railroad secured exclusively from the sale of bonds at a discount.

If a man has a horse that is worth \$100, and if he should attempt to borrow \$120 on that horse, everyone would say that he was erratic, to say the least. You can not borrow more in ordinary business on a piece of property than the property is worth. But here we have railroad after railroad securing its entire funds for the construction of its property from bonds sold at a discount, so that at the very beginning of that railroad's history you have more face bonds of outstanding than you have value of property. Instead of having these financiers and railroad executives put in part of their own money by buying capital stock, it has been only too often the practice to secure the entire funds by the sale of fixed obligations to the public. In addition to that, large amounts of capital stock have been issued in cases such as those to which I have referred without any consideration whatever.

How does the railroad start, then, in its financial history? It starts, first, with bonds outstanding of a face value in excess of the value of the property, and with a large amount of additional stock issued without consideration. Later on, that railroad needs additional money. How is it going to get it? It can not sell stock, because the outstanding stock represents no value, and no person who knows the facts is going to be so foolish as to buy further stock, which will be diluted over the very little, if any, equity which exists at the time.

Secondly, they will have difficulty in selling bonds, because the bonds outstanding have a face value already in excess of the value of the property. How are they going to get the money for these additional cars, this additional equipment, and these additional extensions? They are going to have very great difficulty in getting it, and that particular railroad, unless it has very good earnings, is

going to have trouble. When the trouble comes, gentlemen, it will not be due to public regulation. It will be due, generally, in part to the absence of public regulation, which would have insisted on sound financing for that particular railroad at the very outset.

Various State commissions, which have jumped into the breach, as it were, while the Federal Government has been inactive in these respects, have insisted and do insist on efficient financing of all public utilities, including the railroads, and that the financial structure from the beginning shall be sound, so as to avoid the otherwise inevitable crash. It is under regulation of that kind that quite a number of absolutely new railroads in the State of California have started their operations.

Mr. Chairman, I have diverted a little from the text, but I thought it a proper place to draw your attention to the tremendously important influence which the form or character of the financial structure of these railroads bears on the financial history of these railroads, and on their credit when they need to borrow additional funds.

Senator ROBINSON. Mr. Chairman, is it the purpose of the committee to suspend at this point (at the hour of 12 o'clock and 5 minutes, p. m.)?

The CHAIRMAN. No; Mr. Adamson stated that he could not remain, but suggested that we go on until quarter to 1. Will you be able to conclude your remarks at quarter to 1, Mr. Thelen?

Mr. THELEN. Almost. I have some material which I did not bring and which I would like to refer to.

The CHAIRMAN. We do not wish to hurry you.

Senator UNDERWOOD. Mr. Chairman, I understood—I was not here at the beginning of to-day's session—that the committee had come to the conclusion that after to-day they would suspend these proceedings.

The CHAIRMAN. Yes.

Senator UNDERWOOD. And the present witness and other witnesses would be called back to the committee.

The CHAIRMAN. Yes; for cross-examination.

Senator UNDERWOOD. I would like to ask the witness some questions before he concludes; and that being the case, why should we proceed now if we are coming back anyhow?

The CHAIRMAN. We will not proceed. The purpose was to close with these opening statements and that we postpone our examination of the witnesses until later on. That was the sense of the committee. It is proposed to hear to-day, if possible, Mr. Thelen and Mr. Brookhart on behalf of Government ownership. Our desire is to conclude the hearings for the present to-day, so we arranged to have a session at half past 3 o'clock this afternoon.

Senator ROBINSON. What is the object of postponing the session this afternoon to that unusual hour?

Mr. SIMS. The House will adjourn at that time.

The CHAIRMAN. If it is the sense of the committee that we should take a recess now until half past 3 o'clock, that order will be made.

Senator UNDERWOOD. I would like to ask the witness, whose statement I have been very much interested in, either now or when he comes back—as representing the State commission and being thoroughly informed on this question—that he make a statement to the

committee as to his views as to whether the commission should have the power to initiate rates or whether they should continue to pass on rates that are initiated by the railroads?

Mr. THELEN. I shall give some thought to that question and be glad to give you my views when I am recalled for cross-examination.

Senator UNDERWOOD. I would like to have you do so.

Mr. HAMILTON. I understood Mr. Thelen to say that he would not be able to finish without getting some notes that he had not brought with him.

Mr. THELEN. I have almost everything here and am ready to proceed now or at half past 3, just as it suits the pleasure of the committee.

The CHAIRMAN. Can you form any idea how much longer it will take you?

Mr. THELEN. Not over an hour, I think.

The CHAIRMAN. Then, Mr. Brookhart will come on at about half past 4. Mr. Brookhart, can you tell us how long you desire to occupy?

Mr. BROOKHART. I should think, Mr. Chairman, two hours. I will read most of my statement in order to curtail it.

The CHAIRMAN. Then, I think we can probably close this proceeding this afternoon.

The committee will now take a recess until half past 3 o'clock.

(Accordingly, at 12 o'clock and 10 minutes p. m., the committee took a recess until 3 o'clock and 30 minutes p. m. of the same day.)

#### AFTER RECESS.

The joint committee reassembled at the expiration of the recess, Senator Newlands presiding.

The CHAIRMAN. Mr. Thelen, will you proceed?

#### STATEMENT OF MR. MAX THELEN—Resumed.

Mr. THELEN. Mr. Chairman and gentlemen, this morning I referred to the railroads which are being constructed in the State of California at the present time under State regulation. I think it appropriate to complete that record by referring to those railroads which are now contemplated, although actual construction work has not yet commenced.

Reading from the same telegram to which I referred this morning I find that the following railroads are projected and will probably be built:

Panoche Valley Railroad, 52 miles, \$1,100,000.

Martinez & Concord, 12 miles, \$378,000.

Tidewater Southern, 8 miles, \$110,000—an extension of an existing railroad.

Los Angeles & Salt Lake—another extension of an existing railroad—20 miles, \$1,500,000.

Fresno Interurban—an extension of an electric interurban railroad—5 miles, \$60,000.

A total of 97 miles, at an expenditure of \$3,148,000.

I refer to this railroad construction as illustrating my point, that it can not fairly be said that State regulation stops railroad construction, in view of the history of what is actually going on in the State of California.

It is just possible that there may be some misapprehension with reference to the original issue of stocks and bonds by the Western Pacific Railway Co. That corporation was a California corporation, but the railroad was entirely constructed and all its stocks and bonds were issued before the State provided for control by the State railroad commission over railroad construction and the issue of securities. However, later, when it came to the reorganization, an application was made to the California commission, and the California commission insisted on the type of financial structure to which I referred this morning.

It might be well at this point, before proceeding with the Frisco investigation, to say just a word with reference to the advantages of public regulation, as I see them, both to the public and to the railroads. As far as the public is concerned it is, of course, obvious that State regulation of railroads and other utilities means that they have a tribunal to which they may come for the settlement of their troubles as to rates, to secure more adequate service and facilities, and to secure greater safety both for the traveling public and for the employees of the railroads. No one, I think, doubts the advantages of public utility regulation to the members of the public.

As far as the railroads and public utilities are concerned, I am satisfied that there are advantages to them as great as the advantages which accrue to the public. In the first instance, the Government either has or can provide for sound financial structures. When sound financial structures are provided it means that there will be stability to the securities of that particular utility. In California the securities which are authorized by the Railroad Commission of California find a ready market. Some of the leading public utility corporations of California, such as the San Joaquin Light & Power Corporation, the Mount Whitney Power & Electric Co., and other companies of like character, have recently sold their bonds, under the authority of the Railroad Commission of California, at prices higher than those at which they were ever sold before. We are told by public utility men that there is no question that the control by the public of the security issues of these utilities is very good for the utilities themselves.

Furthermore, Government control, when scientifically exercised, will prevent the construction of needless duplicated property, a matter of very considerable importance. Whenever a railroad is constructed where it is not necessary or whenever a gas or electric company is constructed when not necessary, for the sole purpose of competing with an existing utility of the same character, ultimately the public must pay the bill, and in the meantime the existing utilities must suffer. Scientific regulation would eliminate that sort of thing.

Furthermore, it has been our experience in California that as the result of regulation of the public utilities, there is an entirely different attitude on the part of the public toward these utilities. The people now have a tribunal to which they can come to straighten out their differences with the public utilities, and the result is that although a number of years ago there was an attitude of hostility on the part of the public toward certain utilities, now the public is satisfied to let the commission settle all differences. Instead of being hostile to the utilities, the people attend to other matters, and

there is altogether an entirely different feeling on the part of the public.

I thought that it might be well at this point to draw attention to some obvious advantages of public regulation, both from the standpoint of the public and the utilities themselves. I think I can say fairly that there is not a single broad-gauge utility in the State of California which would go back to the days prior to State regulation. We have been told so again and again by the public-utilities men. I am satisfied that this is also the feeling of broad-gauge public-utility men in all States of the Union.

At the time of adjournment I was reading from the decision of the Interstate Commerce Commission rendered on January 20, 1914, in the matter of the Frisco reorganization and was referring to the causes of the financial difficulties of the Frisco as set forth by the Interstate Commerce Commission. These causes are as follows, as appears from page 142 of the record:

First. Disproportionate capitalization.

Second. The acquisition of new lines.

Third. The financing by the Frisco of the New Orleans, Texas & Mexico and other south Texas lines.

Fourth. The desire for an entrance into Chicago, Ill., resulting in the assumption of heavy fixed charges in the acquisition of the stock of the Chicago & Eastern Illinois Railway.

Fifth. The sale of its securities at prices so low as to indicate a deplorably weakened credit or an extravagant arrangement with bankers to whom large profits accrued in the purchase of the bonds and the subsequent sale of same to the public.

Sixth. Miscellaneous causes, among which are the payment of dividends upon its preferred stock in spite of its weakened credit and need of money, poor investments and expensive rentals, among which are the investment in the New Orleans Terminal Co., stock in the Kirby Lumber Co., and rentals paid the Crawford Mining Co.

You will observe, gentlemen, that in this careful analysis of the causes of the financial condition of the Frisco there is not a single reference to public regulation, either State or Federal. In none of these reports does the Interstate Commerce Commission even suggest that in a single case was State regulation responsible for the financial difficulties in which these railroads found themselves. In practically every case it was their own fault, the fault of the railroad financiers and executives. I could refer further to this report, but I am anxious to keep my promise to finish in an hour.

The next report which I have before me is the report of the Interstate Commerce Commission entitled "The New England Investigation." This report will be found in volume 27 of the Interstate Commerce Commission Reports, at page 560. The report was written by Commissioner Prouty. It was an investigation conducted, on the commission's own initiative, into the financial affairs, rates, classifications, regulations, and practices of the New York, New Haven & Hartford and the Boston & Maine. I had marked certain passages, but I shall eliminate them and read only a part of the conclusion of the commission at page 616:

In conclusion this commission desires to call attention to one lesson from this investigation of national application.

I think, gentlemen, you will realize by this time that it is my sole desire in referring to these matters to help you ascertain such facts, with reference to impaired railroad credit, as the experience of the

past has shown us, so that we may act intelligently in adopting measures to cure existing ills.

The commission said:

No student of the railroad problem can doubt that a most prolific source of financial disaster and complication to railroads in the past has been the desire and ability of railroad managers to engage in enterprises outside the legitimate operation of their railroads—

There we have another cause of impaired financial credit—

especially by the acquisition of other railroads and their securities. The evil which results, first, to the investing public and finally to the general public can not be corrected after the transaction has taken place; it can be easily and effectively prohibited. In our opinion the following propositions lie at the foundation of all adequate regulation of interstate railroads:

1. Every interstate railroad should be prohibited from expending money or incurring liability or acquiring property not in the operation of its railroad or in the legitimate improvement, extension, or development of that railroad.

2. No interstate railroad should be permitted to lease or purchase any other railroad, nor to acquire the stocks or securities of any other railroad, nor to guarantee the same, directly or indirectly, without the approval of the Federal Government.

3. No stocks or bonds should be issued by an interstate railroad except for the purposes sanctioned in the two preceding paragraphs, and none should be issued without the approval of the Federal Government.

I desire to refer now to an investigation conducted by the Interstate Commission under direction of the Senate into the financial transactions of the New York, New Haven & Hartford Railroad Co. This report is dated July 11, 1914. It will be found in volume 31 of the Interstate Commerce Commission's reports at page 32.

I read from page 32:

The New Haven system has more than 300 subsidiary corporations in a web of entangling alliances with each other, many of which were seemingly planned, created, and manipulated by lawyers expressly retained for the purpose of concealment or deception.

That is an indictment against the members of my own profession, but we must have the truth, whichever way it cuts.

Ordinarily in investigations of this character evidence is easily adduced by placing the witnesses upon the stand, but in this investigation the witnesses, other than the accountants for the commission were in the main hostile, and with few exceptions their testimony was unwillingly given.

The result of our research into the financial workings of the former management of the New Haven system has been to disclose one of the most glaring instances of maladministration revealed in all the history of American railroading.

I desire to draw your attention particularly to what follows:

The difficulties under which this railroad system has labored in the past are internal and wholly due to its own mismanagement.

We have here a letter of good conduct, in so far as the States of New York, Connecticut, Rhode Island, and Massachusetts are concerned. Apparently, in this case, the State commissions were not at fault.

I read further, as follows:

Its troubles have not arisen because of regulation by governmental authority. Its greatest losses and most costly blunders were made in attempting to circumvent governmental regulation and to extend its domination beyond the limits fixed by law.

Referring to an attempt on the part of the New York, New Haven & Hartford Railroad Co., contrary to the laws of the State of Massa-

chusetts, to acquire control over the Boston & Maine Railroad and other roads, it is said:

The subject matter of this inquiry relates to the financial operation of a railroad system which, on June 30, 1903, had a total capitalization of approximately \$93,000,000, of which \$79,000,000 was stock and \$14,000,000 bonds. In the 10 years from June 30, 1903, this capitalization was increased from \$93,000,000 to \$417,000,000, exclusive of stock premiums, or an increase of \$324,000,000—

That was in 10 years—

Of this increase approximately \$120,000,000 was devoted to its railroad property, and was expended for betterments and equipment. This leaves the sum of \$204,000,000, which was expended for operations outside of its railroad sphere. Through the expenditure of this sum this railroad system has practically monopolized the freight and passenger business in five of the States of the Union. It has acquired a monopoly of competing steamship lines and trolley systems in the section which it serves. The financial operations necessary for these acquisitions, and the losses which they have entailed, have been skillfully concealed by the juggling of money and securities from one subsidiary corporation to another.

I shall now take one case as illustrative of what was done. The commission says, on page 35:

The Westchester is a story of the profligate waste of corporate funds. The road was not necessary as a part of the New Haven system. It parallels other lines already owned by the New Haven, and traverses territory which the New Haven already served. That it was recognized as unnecessary by the New Haven itself at its inception is evidenced by the fact that the New Haven sought an injunction to restrain the construction of this road on the specific ground that it was not in answer to any public necessity and paralleled its already existing line.

The enormous sum of \$36,434,173.25 was expended for a road only 18.03 miles in extent, which is being operated at an annual loss of approximately \$1,250,000, and which will have to increase its earnings four and one-half fold before it can pay its operating expenses and fixed charges. It is inconceivable that this enterprise could have been entered into by the New Haven as a result of the mandates of good judgment and proper railroading.

The commission refers further to this particular transaction, and then refers to the Rhode Island trolleys, to the steamships, to the steamers *Yale* and *Harvard*, and then to the Boston & Maine. The reference to that railroad begins on page 47 of the report. There the commission says:

Before the New Haven secured control of the Boston & Maine the stockholders of the latter had realized substantial dividends for a period of more than 50 years. Its credit was high and its stock was, in the year 1900, officially valued by the Railroad Commission of Massachusetts at \$190 per share.

The Boston & Maine, before the New Haven secured control, was conservatively managed, had a low capitalization, and only a moderate debt. Its capitalization was \$28,000,000 common, \$3,000,000 preferred, and its debt was \$34,000,000.

There is reason for the belief that this railroad in the hands of its former management would have continued to pay dividends and serve its constituency of passengers and shippers with reasonable rates and adequate facilities.

That is the picture before the transactions to which I shall refer. Then the Boston & Maine ran into stormy days. Through the intermediation of a member of the banking firm of Lee, Higginson & Co., of Boston, arrangements were made by which the New Haven acquired control of the Boston & Maine, contrary to the laws of the State of Massachusetts. This caused all kinds of difficulties. Finally, on page 49, the result of the new management of the Boston & Maine

under the direction of the New Haven & Hartford is reported as follows:

The financial strength of the Boston & Maine, which had been made manifest for more than half a century, was converted into financial weakness in half a decade after passing into the control of men who had the reputation of being eminent financiers. These great names proved to be of no reliance to investors.

The management of the Boston & Maine by the New Haven was unwise. It began in illegality and in a lust for extended monopoly and has resulted in great depreciation and serious impairment of credit.

We are told, gentlemen, that the carriers will hereafter present to you bankers from Boston and other places in New England who will testify that the people of New England are slow about investing in railroad securities at the present time. The answer is very simple. It is New York, New Haven & Hartford.

I desire in this connection simply to read the last paragraph of the decision. I read now from page 70, under the heading "Remedy in public conscience and laws," as follows:

The insuring of honesty throughout the management of the great railroads of the country is a most important question before the people to-day, and only when through exposure of wrongdoing and an awakened public conscience, coupled with effective laws, this result is produced may railroading be placed upon the high level that it should occupy. The revelations in this record make it essential for the welfare of the Nation that the reckless and profligate financiering which has blighted this railroad system be ended, and until this is fully done there will be no assurance that the story of the New Haven will not be told again with the stockholders of some other railroad system as the victims.

Until this is done, gentlemen, we can have no permanent strengthening of railroad credit.

I should like to refer for a moment to a decision of the Interstate Commerce Commission, headed "No. 933, St. Paul & Puget Sound accounts; in the Matter of Rates, Practices, Accounts, and Revenues of Carriers subject to the act to regulate commerce." This decision was rendered on February 9, 1914, and you will find it in Twenty-ninth Interstate Commerce Commission Report, page 508. In that case the Interstate Commerce Commission, acting through Commissioner Harlan, made an investigation into the systems of accounts of the St. Paul Railroad and of the Puget Sound Railroad. I read from page 509, as follows:

All students of railroad economics are well aware of the fact that prior to 1907, when the commission was given real power to control such matters, the accounts of carriers in many cases were influenced more by other considerations than by a desire to reflect the actual facts. A financially strong road, making large net earnings, would not hesitate to conceal the facts by adding to its operating-expense accounts sums disbursed in improving its property; on the other hand, a financially weak road, seeking to enhance its credit by a good showing of operating results, would include in its property accounts sums expended in operation.

In other words, they would take sums which ought to go into the operating account, remove them to capital account, and by that method decrease the operating expenses and increase the apparent net income. The report continues as follows:

The result was that a carrier's annual and monthly statements of net revenue often reflected nothing more than the particular showing desired by its executive. These reports were often used for speculative purposes, and the stockholder and the general public were left without any assurance as to whether the dividends declared were paid from income or surplus or out of capital.

Then comes this observation:

A correct statement of the property account of a carrier is of scarcely less importance than a correct statement of its expenditures for operation. It is our understanding that prior to 1907, when the commission had no efficient control over such matters, the accounts representing the cost of road of many steam railway companies had substantially no real significance, except as they demonstrated the utter disregard of all accounting principles. As a rule, they represented neither investments nor assets. Although described as "cost of road and equipment," they frequently bore no relation whatever to cost. They often included, at par value, large amounts of stock issued as premiums to promoters and investors in bonds or held in the treasury of the issuing company, in the hope that the future growth of the company's traffic or the exigencies of corporate control might give them some value.

Referring now specifically to the St. Paul Railroad, the Interstate Commerce Commission finds that about \$5,000,000, which should have appeared under the head of operating expenses, was put into capital account, thereby increasing the apparent net income of the railroad during the first year of its operation \$5,000,000 more than was the fact. In connection with that matter the commission, at page 511, says:

By means of these entries the income of the Chicago, Milwaukee & St. Paul Railroad Co. for the year 1910 was overstated by more than \$5,000,000.

As the result of this overstatement of income for the fiscal year ending June 30, 1910, the report of the St. Paul Co. for the succeeding year showed an apparent falling off in revenue and income, as compared with the previous year, of over \$2,000,000.

This, of course, called for some sort of explanation. The commission continues as follows:

In its report to its stockholders for the latter year the explanation offered by the officers of the company was that—

I draw your particular attention to this explanation because it has a familiar ring. It is as follows:

The large decrease in the net operating revenue is accounted for by the inability to obtain increased rates and the great increase in the cost of labor.

That is what the railroad told their stockholders was the cause of the apparent falling off in net operating income in 1911 as compared with 1910, but here is what the Interstate Commerce Commission says about it:

This statement was not in accordance with the facts in the case. Had the income for the year 1910 been properly reported, the net income for the following year, instead of showing a decrease, would have shown an increase of about \$2,800,000 over the net income for the fiscal year ending June 30, 1910. The reference to "the great increase in the cost of labor" was no less at variance with the real facts.

The commission goes on to show that the actual amounts paid for labor were less in 1911 than in the year 1910. The commission then says:

These departures from what were the actual facts are sufficiently serious to merit the strongest condemnation.

What happened here, gentlemen, was that in order to sell its securities the railroad misrepresented to the extent of \$5,000,000, making it appear that its net operating income for the year 1910 was \$5,000,000 more than it actually was. Thus they induced people to buy securities on the strength of that misrepresentation.

Is there any wonder that those people should hesitate to buy additional railroad securities when they had been deceived in that way? Is this not another of the causes of impaired railroad credit—failure to be honest as between the corporation and its own stockholders and its own investors? Furthermore, when the truth finally comes out we find the same old excuse, that it is due to the failure to secure increased rates and to the great increase in the cost of labor, while, as a matter of fact, the difficulty was caused by the juggling of its own books by the corporation itself.

I say these words not in any spirit of hostility. I am a public servant. I am as much a representative of the railroads as I am of the shippers and of the people who travel on the railroads, but I feel strongly that we must find out what the truth is, and unless we do find out what the truth is we are going to flounder around hopelessly in legislation, both State and Federal.

I shall refer to one additional report. This is the report of the Interstate Commerce Commission, decided on July 31, 1915, in the matter of the financial transactions, history, and operation of the Chicago, Rock Island & Pacific Railway Co. This will be found in Thirty-sixth Interstate Commerce Reports, at page 43. This is another of the railroads in the hands of receivers. We are gradually accounting for most of the railways which are in the hands of receivers and finding out that the reason for the receivership is not State regulation, but some entirely different cause. This is the Rock Island, then. The commission says, at page 43:

In 1902 the main line of the Chicago, Rock Island & Pacific Railway Co. extended from Chicago to Denver, with branch lines to St. Paul, Minneapolis, and Kansas City. The territory served is one of the richest and most prosperous in the country and the system's ramifications of branch lines insures to it a large volume of tonnage. It was then striving and its prospects were promising, its stock selling in the markets of the world at more than \$200 a share. In 1914 the shares had fallen to \$20, and the road is now in receivers' hands. The evidence shows that the earnings of the railway company have steadily increased and that in 1914 they were the largest in its history.

But, nevertheless, the road went into the hands of receivers.

The commission, at pages 47 and succeeding pages, draws attention to the fact that not merely were relatively large salaries paid to large numbers of officers of this railroad, but in addition thereto large additional contributions were made, just out of good fellowship or something or other, with the result that the contributions to the officials of the railway in excess of their salaries aggregated about a million dollars. That was not all. They engaged in certain financial transactions with some other railroads, resulting in very heavy losses, trying to buy out other railroads which did not have the business to warrant it. On page 55 appears an itemized statement of the losses suffered by the railroads as a result of these financial transactions, amounting to a total of \$20,000,000.

Then, under the head of "Reports to Stockholders," I would like to read one paragraph:

Misrepresentation of assets in reports of stockholders appears to have been a practice of the directors of the railway company. On June 30, 1904, a book surplus was claimed for the railway company of \$22,343,955.28. By June 30, 1914, the company conceded a reduction of this surplus to \$6,199,841.08, and even this amount was fictitious.

So the reports to the stockholders, on the strength of which it was do doubt intended to sell additional stock, were entirely misleading.

On page 57 the commission continues its report:

In view of the fact that the reported value of the "securities" listed for the year 1914 was nearly \$18,000,000 in excess of their actual value, instead of a surplus of more than \$6,000,000, claimed by the railway company, there should have been shown a deficit of over \$11,600,000. Another misleading and objectionable practice of the railway company officials was the failure to state on the pay rolls the true amounts paid to its officers.

Then I direct your attention to this statement of the commission:

The publication of misleading reports to stockholders can not be too severely condemned, and the individuals guilty of such acts should be subject to adequate penalties.

Of course it is entirely obvious that if people buy stock or bonds on the faith of the financial statements of the railroads and later find that the financial statements are erroneous and misleading and that, in the language of the street, "they have been stung," they are going to be very slow about purchasing additional railroad securities. Finally this report, on page 61, says:

The Clayton Antitrust Act, which becomes effective October 15, 1916, will make it unlawful for any person at the same time to be a director in two or more competing corporations, any one of which has a capital, surplus, or undivided profits aggregating more than \$1,000,000, but common carriers are expressly exempted from its application. It should be just as grave an offense for an official of a railway to be faithless to his trust for financial gain as it is for an elected official of the Government to betray his trust for money reward. By this case the need of some limitations on the issuance of stocks and bonds by common carriers, whether directly or through holding-company devices or otherwise, is again demonstrated.

This record, as you will notice, is dated 1915. We have here a series of these reports, running from the Chicago & Alton case, which, I think, was in 1907, through the intervening years up to 1915, and still they are coming.

Senator CUMMINS. Mr. Chairman, I would like to ask just one question—not a question—concerning the report he has just read. Does that report show how the Rock Island road took its \$75,000,000 of capital stock in 1902, and more than doubled it in amount, without adding anything to the value of the property?

Mr. THELEN. I think it does, Senator.

Senator CUMMINS. I would like the entire report to go in.

The CHAIRMAN. That order will be made.

(The report in full is printed as follows:)

[Interstate Commerce Commission. No. 6834. In re financial transactions, history, and operation of the Chicago, Rock Island & Pacific Railway Co. Submitted June 5, 1916. Decided July 31, 1915.]

M. L. Bell and White & Case for Chicago, Rock Island & Pacific Railway Co.  
Roberts Walker for the Rock Island Co. of New Jersey, and Chicago, Rock Island & Pacific Railroad Co. of Iowa.

Walker D. Hines for L. F. Loree.

Samuel Untermyer for protective committee of stockholders of the Chicago, Rock Island & Pacific Railway Co.

Silas H. Strawn for Robert B. McLain, George E. Scott, and S. M. Felton.

## REPORT OF THE COMMISSION.

By the Commission:

Pursuant to an order entered on April 24, 1914, the commission has investigated the financial transactions, history, and operation of the Chicago, Rock Island & Pacific Railway Co., and make the following report in respect thereto:

The initial hearing was held on October 16 and 17, 1914. Thereupon the hearing was adjourned until February 25, 1915, to enable the accountants of the commission to complete certain investigations suggested by the facts disclosed. On that date the hearing was resumed and continued through the 25th, 26th, and 27th of February. On May 22, 1915, the commission ordered the hearing reopened for the purpose of further inquiry. Additional hearings were held on June 4 and 5, 1915.

In 1902 the main line of the Chicago, Rock Island & Pacific Railway Co. extended from Chicago to Denver, with branch lines to St. Paul, Minneapolis, and Kansas City. The territory served is one of the richest and most prosperous in the country and the system's ramification of branch lines insures to it a large volume of tonnage. It was then thriving and its prospects were promising, its stock selling in the markets of the world at more than \$200 a share. In 1914 the shares had fallen to \$20 and the road is now in receiver's hands. The evidence shows that the earnings of the railway company have steadily increased, and that in 1914 they were the largest in its history. The results of the management, which is the subject of this investigation, may be seen from the statement above, made as to the market value of the stock, and from the table below, showing the capitalization, indebtedness, and operating accounts for the years 1901 and 1914:

	1901	1914
Capital stock.....	\$49,921,400.00	\$74,995,122.50
Funded debt.....	63,538,000.00	235,246,300.00
Loans payable.....	None.	3,500,000.00
Operating revenue.....	26,075,574.00	65,848,258.00
Operating expenses.....	17,096,066.00	49,517,948.00
Interest on funded debt.....	2,931,980.00	9,934,169.00
Rentals.....	473,962.00	1,881,651.00
Net income.....	5,306,519.00	395,915.00
Surplus.....	10,263,184.55	6,294,208.94
Mileage owned.....	3,128	5,367
Mileage operated.....	3,772	7,729

## SYNDICATE CONTROL.

In 1901 Daniel G. Reid, W. H. Moore, J. H. Moore, and W. B. Leeds purchased about \$20,000,000 of stock of the company, and by the use of proxies they soon became members of the board of directors, W. B. Leeds being made president and D. G. Reid chairman of the executive committee. This syndicate procured the selection of other members of the board of directors, notably, F. L. Hine, George McMurtry, and George T. Boggs, each of whom appears to have acted and voted in accordance with the wishes of the members of the syndicate. One other director stated that he knew but little of what was being transacted in the affairs of the railway company and that he was a member of so many other boards of directors that he had no opportunity to examine into things for himself, but had to take the word of those in authority. Thus the syndicate con-

trolled the board through the directorships held by themselves and by those subject to their wishes.

At a stockholders' meeting held June 5, 1901, at which an increase of the capitalization of from about \$50,000,000 to approximately \$60,000,000 was authorized, W. H. Moore was elected a director of the company, and at a directors' meeting held on the same date Daniel G. Reid was also elected a director. At the former meeting a 10 per cent stock dividend was declared. On July 31, W. B. Leeds was elected by the board a director to succeed W. A. Nash, resigned.

On October 24 the articles of incorporation of the railway company were amended to provide for an executive committee to consist of the president and six directors, to be designated by the board, and to be invested with all of the powers of the board when it was not in session. W. H. Moore and W. B. Leeds were appointed on this committee on the day it was created, and on December 12 following W. B. Leeds succeeded W. G. Purdy as president of the railway company. Then D. G. Reid became a member of the executive committee and J. H. Moore a member of the board. On January 30, 1902, J. H. Moore was elected by the board to the executive committee in place of H. R. Bishop, resigned. The other members of the executive committee at this time were R. R. Cable, Marshall Field, and A. R. Flower.

On June 4, 1902, the capital stock of the railway company was increased to \$75,000,000 and the board authorized President Leeds to sell to certain individuals portions of this increased stock at par, although at the time the stock was quoted on the market above 175.

#### ORGANIZATION AND USE OF HOLDING COMPANIES.

In July, 1902, the syndicate organized two holding companies, the Chicago, Rock Island & Pacific Railroad Co. of Iowa and the Rock Island Co. of New Jersey. The railway or operating company will be referred to hereinafter as the railway company, and the holding companies as the Iowa company and the New Jersey company, respectively. The St. Louis & San Francisco Railroad Co. will be referred to as the Frisco.

The authorized capitalization of the Iowa company was \$125,000,000 in stock and \$75,000,000 in 4 per cent collateral bonds. That of the New Jersey company was \$150,000,000 in stock, of which \$54,000,000 was preferred and \$96,000,000 common. In the latter company the preferred stock only had voting power to elect directors of the first class, which directors under the by-laws constituted a majority of the board. The directors of these two corporations first elected were merely figureheads, but later members of the syndicate became directors of both companies and controlled them. The New Jersey company and the Iowa company each issued their stock as fully paid, whereas no payment was made on either. Then, upon motion of D. G. Reid, the Central Trust Co. of New York, of which J. N. Wallace was and is president, was selected as trustee, and an arrangement was made with that company whereby the entire bond issue of the Iowa company and stock issue of the New Jersey company were placed with it, under an agreement that they were to be exchanged for stock of the railway company in the proportion of

\$100 in Iowa company bonds and \$70 in preferred and \$100 in common stock of the New Jersey company for each \$100 in stock of the railway company, or \$270 face value of the holding company securities for each \$100 par value of the railway company stock. Under this agreement the members of the syndicate deposited railway stock as follows: D. G. Reid \$5,915,437.50, W. H. Moore \$6,118,975, J. H. Moore \$3,059,262.50, W. B. Leeds \$5,597,100, making a total of \$20,690,775, for which they received \$20,690,775 in the Iowa company's bonds and the same amount in the common and \$14,483,542 in the preferred stock of the New Jersey company, a total of \$55,-865,092.

The 10 per cent stock dividend declared by the railway company on June 5, 1901, had the apparently intended effect of creating a demand for the stock of the holding companies, the only revenue of which was from dividends on the stock of the railway company, and practically all of the stockholders of the railway company exchanged their stock, the total amount deposited being approximately \$71,000,000, or all but about \$4,000,000 of the total railway stock. The par value of the holding companies' securities issued in exchange amounted to about \$191,000,000.

Under the terms of the trust agreement the railway stock deposited was to be held by the trust company as collateral to secure the Iowa company's bonds, and the trust company was authorized to sell the railway stock upon default of payment of interest on any of the bonds.

Thus by the organization of the two holding companies, the syndicate—the members of which held but little more than one-fourth of the railway stock—secured control of and dominated the affairs of this transportation system.

A significant transaction at this time is that growing out of the action of C. H. Venner, a stockholder of the railway company. He made demands upon the officers of the railway company in December, 1902, and in January, 1903, for a list of its shareholders. Being ignored, he instituted on January 31, 1903, a proceeding in a State court of Illinois to enjoin the organization of the holding companies and the exchange of railway company stock for their securities. In February and March, 1904, the railway company paid Venner \$291,000, ostensibly in consideration of his delivery to it of securities of the New Jersey company and of the railway company valued at \$91,000 and stock of the Nebraska Central Railway and of the Nebraska Construction Co. of a nominal value of \$200,000. Thereupon the suit to restrain the holding companies' plan was dismissed. Neither the Nebraska Central Railway Co. nor the Nebraska Construction Co. had any road or other tangible assets, and their stock is therefore considered to be without value. The conclusion is obvious that the payments to Venner were in consideration of his refraining from further prosecuting in the courts his opposition to the syndicate plans. The railway company incurred in this litigation expenses amounting to about \$17,000.

The expense of incorporating the holding companies, \$218,000 for the Iowa company and \$120,000 for the New Jersey company, was paid by the railway company, but these amounts were returned to it three years later without interest, the necessary funds having been secured by the holding companies from dividends on the stock of the

railway company. Practically the entire expense of renting, fitting up, and furnishing the quarters occupied by the holding companies for the first four years of their existence was sustained by the railway company. During the next four years, or until 1910, the proportion of this expense borne by the holding companies was slightly increased, the balance being distributed between the railway company, the Frisco, the Chicago & Eastern Illinois Railroad, the Evansville & Terre Haute Railroad, and the Chicago & Alton Railroad. From 1910 to 1914 the expenses of the offices were prorated on the basis of 50 per cent to the railway company, 37½ per cent to the New Jersey company, and 12½ per cent to the Iowa company. On the basis of apportionment adopted in 1910, the overcharge paid by the railway company prior to that year would amount to approximately \$290,000. That amount was improperly diverted from the treasury of the railway company.

#### SALARIES OF AND CONTRIBUTIONS TO OFFICERS AND DIRECTORS.

The salaries paid to some of the principal officers at various periods were as follows:

	Per annum.
H. U. Mudge, president.....	\$60,000
L. F. Loree, chairman executive committee (one-half to be paid by the Frisco).....	75,000
R. A. Jackson, vice president and general solicitor.....	50,000
R. R. Cable, member of board of directors.....	32,000
W. B. Leeds, president.....	32,000
B. L. Winchell, president.....	40,000
B. F. Yoakum, chairman executive committee.....	30,000
Daniel G. Reid, chairman board of directors.....	32,000
C. H. Warren, first vice president.....	35,000

W. G. Purdy, upon his retirement from the presidency, was given two years' salary at \$22,500 per annum.

Mr. Mudge, president of the railway company, and now one of the receivers, asserted that the troubles of the railway were in a measure due to increase of wages and governmental regulations. When asked what wages he referred to as being increased, he pointed out the wages of clerks, telegraph operators, conductors, and brakemen. While he regarded the wages of these minor employees as having partially sapped the financial strength of the railway, he declared that the salaries paid to the higher officers of the company had no appreciable effect on its expenses.

D. G. Reid, upon the witness stand, was interrogated and answered as follows:

Question. Mr. Reid, do you think these men earned these high salaries?

Answer. I do not think there is a man who did not earn more than he was getting.

Question. In other words, you defend paying these high salaries?

Answer. I defend nothing. Here is 8,000 miles of railway; a man who can run 8,000 miles of railroad is worth all he can get.

Many large contributions were made to officers and directors of the railway company. George T. Boggs, a director and secretary to the board of directors of the railway company, and also a director in the two holding companies, admitted that he served in these capacities merely as a dummy for the syndicate. On the question of the

rights of the public to have corporate funds of common carriers properly applied, he testified as follows:

Question. Do you consider that the directors of a railway company, a public-service corporation, have the right to do whatever they please with the money of the railway company.

Answer. As in their judgment seemed right; yes.

Question. Did it ever occur to you that the money in the treasury of the railway company was the result of taxation of the public in passenger and freight tariffs, and that the public had an interest in the funds in the treasury?

Answer. I don't know that I ever thought of it particularly.

Question. And that the public had a concern in the funds of the railway company not being dissipated in order that they might be applied to improvements and betterments and to proper purposes?

Answer. I never considered that they were dissipated.

Question. And did it ever occur to you that in taking money from the treasury of the railway company, a public-service corporation, an additional burden was placed upon the passenger and freight traffic in order to make good the loss?

Answer. No; I never thought of it in that light.

Question. You don't believe it now, do you?

Answer. No.

This opinion was also expressed in effect by other officers and directors. It appeared to be the idea of those in control of the railway that it was no concern of the public what became of the corporate funds so long as rates were reasonable. Those stating this opinion apparently did not take into consideration the fact that if the funds derived from transportation services are expended wastefully or corruptly the inevitable result must be either increased charges in order to enable the railway company to obtain money to pay operating expenses, or bankruptcy.

Following are specific instances shown of record of the contributions referred to:

J. E. Gorman, first vice president in charge of freight and passenger traffic, was secretly paid \$18,750 per annum, making his total compensation \$43,750, whereas the pay roll showed \$25,000.

C. A. Morse, chief engineer, received a salary of \$15,000 per annum and a secret bonus of \$3,000 on the first of each year.

Upon the retirement of R. A. Jackson as general solicitor he was given \$100,000 in cash.

As an inducement to L. F. Loree, chairman of the executive committee, to relinquish, after 10 months' service, a joint contract with the railway company and the Frisco under which he was to receive a salary of \$75,000 per annum for a period of 5 years, and in addition was to be paid a bonus of \$500,000 at the expiration of the contract, he was given bonds of the railway company of a par value of \$450,000. This was borne equally by the two companies, and the proportion of the railway company was charged to profit and loss. The total amount borne by the railway company in this transaction exceeded \$250,000.

C. H. Warren, vice president, was given by the railway company \$150,000 in par value of the common, and \$105,000 in par value of the preferred stock of the New Jersey company, and \$50,000 in cash. There was no board authorization for the latter expenditure, the item being represented in the records of the railway company merely by a voucher signed by D. G. Reid.

R. R. Cable, a member of the executive committee, received from the railway company \$30,000 in bonds of the Iowa company, then worth \$24,500, for his services in the acquisition of the Burlington, Cedar Rapids & Northern Railway Co., and he was paid by the latter company \$85,000 in the same transaction. Mr. Cable also received another contribution, which will be referred to later.

Robert Mather, vice president, was given \$25,000 in cash.

George T. Boggs, director and secretary of the board of directors of the railway company, was given \$15,000 in cash when he retired from the secretaryship of the railway company.

As hereinbefore indicated, when the capital stock of the railway company was increased to \$75,000,000, shares of the par value of \$880,500 were placed in the name of the president, to be thereafter distributed in accordance with the following resolution of the executive committee, passed at a meeting held in New York July 1, 1902:

*Resolved*, That such portion as the president may determine of the shares of the increased capital stock of the company not required for the purpose of the foregoing resolutions shall be disposed of at par by the president for the benefit of such officers of the company as the president shall elect and determine.

This stock was later exchanged for securities of the Iowa and New Jersey companies in the same manner as was stock of the stockholders of the railway company.

Following this exchange R. R. Cable received securities of a market value of \$368,300, for which he paid \$200,000.

H. A. Parker, first vice president, received securities then worth \$27,900, for which he paid but \$15,000.

Robert Mather received securities of a market value of \$145,912 above his payments therefor.

The contributions to officials of the railway company in excess of their salaries aggregated about a million dollars.

#### IRREGULAR VOUCHER PAYMENTS.

Unexplained vouchers for amounts aggregating \$72,523.45 were disbursed to the officers of the railway company for purposes not clearly defined. One such voucher, for \$6,823.12, was drawn apparently to reimburse W. H. Moore for losses sustained by him in "supporting the market while bonds of the railway company were being sold." The voucher was certified by D. G. Reid, "for the benefit of the railway company." No papers were attached to the voucher and no other information was available with respect to the disbursement.

Another voucher, in favor of the Liberty National Bank, of New York City, in exchange for a cashier's check issued to Robert Mather for \$25,000, is charged to "general expenses" under "operating expenses." This voucher refers to a miscellaneous file, shown by the index thereto to have comprehended "contributions to campaign committee." The file, however, was not produced, and a diligent effort on the part of the accountants to secure it was unavailing. Without this file it is impossible to state the purpose for which the money was expended, but the generalization "contributions to campaign committee," in the light of the practices indulged in by the syndicate in question, is clearly suggestive.

The books of the railway company reveal payments aggregating \$44,066.05 to the Denver Post. The vouchers attached read, "for

advertising in editorial and news columns." Other entries show that three of these vouchers, aggregating \$20,000, cover a refund that this newspaper received at the rate of 25 cents per hundred on its freight carried over the lines of the railway company from points in Wisconsin.

Another voucher is for \$50,000 to S. M. Felton, for the railway's proportion of amount "paid by E. H. Harriman and his associates for money expended by them to secure the discontinuance of a line of road being constructed in 1900 between Peoria, Ill., and Clinton, Iowa, as per agreement between R. R. Cable, chairman of the board, and E. H. Harriman."

#### THE ST. LOUIS & SAN FRANCISCO RAILROAD CO.

On May 6, 1903, an agreement was executed between the Iowa company, the New Jersey company, and J. P. Morgan & Co., wherein it was agreed that the common stock of the Frisco would be exchanged for securities of the Iowa and New Jersey companies.

The terms of the agreement provided that for each share of the common stock of the Frisco there would be exchanged \$60 par value in 5 per cent bonds of the Iowa company and \$60 par value of the common stock of the New Jersey company. Pursuant to this agreement Frisco common stock in par value of \$28,940,300 was exchanged for securities of the Iowa and New Jersey companies in par value of \$34,728,360, equally divided between stock and bonds.

The Frisco stock thus exchanged was deposited as collateral for the bonds of the Iowa company, and in December, 1909, was resold to B. F. Yoakum for \$37.50 a share, or \$10,852,000. This amount was insufficient to redeem the Iowa company bonds, which was necessary in order to make delivery of the Frisco stock, and the Iowa company, having no resources, issued to the railway company its bonds, which now appear to be worthless, to an amount in par value of \$7,500,000 and received therefor \$7,300,000 in cash, the net proceeds from a loan of \$7,500,000 made to the railway company by the First National Bank of New York. Of these bonds, \$1,388,000 were subsequently retired, leaving in the possession of the railway company \$6,112,000, which the Iowa company has no assets to retire. The latter amount was thus taken from the treasury of the railway company to meet an obligation of the Iowa company, for which the railway company was in no way responsible and from which it derived no apparent benefit.

The final result of this transaction is that the railway company has sustained a loss estimated to be about \$6,500,000.

#### CHICAGO & ALTON RAILROAD CO.

In November, 1903, an account styled "B. F. Yoakum advances" was opened on the general ledger of the railway company to cover amounts advanced by it for the purchase of stock of the Chicago & Alton Railroad Co., hereinafter referred to as the Alton company.

As the result of transactions in the Alton stock the railway company acquired 48,800 shares of preferred and 144,200 shares of common at a total cost of \$9,709,876.49. These shares were bought principally in 1903, but sundry purchases were made after that time

until June 30, 1907, when the above total amount had been accumulated.

In October, 1907, the railway company delivered to the Toledo, St. Louis & Western Railroad Co. 41,100 shares of the preferred and 144,200 shares of the common stock of the Alton company, receiving in exchange for the former 4,110 series "A" \$1,000 bonds and for the latter 5,047 series "B" \$1,000 bonds of the Toledo, St. Louis & Western.

On November 28, 1908, the executive committee of the railway company authorized the sale of the remaining shares of the preferred stock of the Alton company held by the railway company, together with sundry bonds, series "A," of the Toledo, St. Louis & Western Railroad Co. Pursuant thereto 3,200 shares of the Alton preferred were sold at a loss of \$45,527.69, and the sale of 3,710 of the series "A" bonds of the Toledo, St. Louis & Western resulted in a loss of \$393,572.44.

On June 30, 1914, the railway company owned 400 series "A" and 5,047 series "B" bonds of the Toledo, St. Louis & Western and 4,500 shares of Alton preferred, which in the aggregate had cost it \$6,193,240.36, whereas on the date named their market value was \$1,582,400, a difference of \$4,610,840.36. In addition, the money with which the Alton stock was originally purchased was secured from the sale of bonds, the interest on which to June 30, 1914, less dividends on the stock and interest on the bonds secured, amounted to \$1,320,644.76.

From the foregoing it will be noted that the total loss sustained by the railway company as a result of the disastrous Alton deal was approximately \$6,370,000.

#### TRINITY & BRAZOS VALLEY RAILWAY CO.

A contract was entered into under date of March 31, 1906, between the railway company, the New Jersey company, the Colorado & Southern Railway Co., and the Frisco. The last-named carrier's participation was only to the extent of through-traffic arrangements.

The cost of construction of the Brazos line, which is practically the entire line of the Trinity & Brazos Valley Railway, was borne by the Colorado & Southern Railway, and under the terms of the contract the latter company and the railway company were to share equally the profits or losses of the Trinity & Brazos Valley, and on May 1, 1935, the railway company was to pay to the Colorado & Southern one-half of the entire cost of the Brazos line, receiving in return one-half of the bonds of the Trinity & Brazos Valley and one-half of other evidence of debt included in the total cost of the Brazos line. The contract further provided for the delivery to the New Jersey company of one-half of the stock of the Trinity & Brazos Valley, the former to make payment only of such amounts as are defaulted by the railway company.

A supplemental contract was entered into on June 1, 1914, wherein the railway company and the Colorado & Southern release each other from the obligation to make any further payments to or for account of the Trinity & Brazos Valley, and the railway company agrees to pay to the Colorado & Southern one-half of the interest at the rate of 4½ per cent per annum on the total cost of the Brazos line to

May 1, 1935. The total cost of the Brazos line approximated on June 30, 1914, \$11,000,000.

In accordance with these agreements, the railway company advanced to June 30, 1914, to and for the account of the Brazos line \$3,729,863.87. For all but \$35,000 of this the railway company holds certificates of indebtedness of the Trinity & Brazos Valley, on which there has accrued unpaid interest charges of \$774,918.20. The total investment of the railway company, therefore, is \$4,504,782.07, and in view of the fact that the Trinity & Brazos Valley is now in the hands of a receiver and the operation of its property has for some time resulted in a deficit, it appears that this investment is of very doubtful value.

#### CONSOLIDATED INDIANA COAL CO.

The Consolidated Indiana Coal Co. was incorporated under the laws of Maine April 29, 1905, by interests affiliated with the railroad company. Although R. A. Jackson, vice president and general counsel of the railroad company, was receiving a salary of \$50,000 a year, he was paid \$10,000 by the railway company to draw up the incorporation papers. The coal company sold to certain New York bankers bonds of a par value of \$2,500,000 and capital stock of a par value of \$1,000,000 for \$2,375,000. The remainder of the capital stock, of a par value of \$2,400,000, was then delivered to the railway company in consideration of its guaranty indorsed upon the face of the coal company's bonds of payment of interest accruing thereon. The price paid for the coal property owned by the consolidated company was estimated to be substantially more than it was actually worth, and ever since its incorporation it has been operated at a loss.

Prior to June 30, 1914, the railway company had made advances to the coal company aggregating \$2,354,453.19. The railway company received interest on these loans at the rate of 4 per cent per annum, computed monthly up to June 30, 1910, when all such interest payments were discontinued. The loss on the part of the railway company attributable to this venture can not be computed exactly, but the loss in interest charges alone since 1910 has amounted to more than \$400,000. As the operation of the coal company has for some time been conducted at a loss, there is little prospect of the railway company being reimbursed for the advances made by it.

#### DERING COAL CO.

The incorporators of the above-entitled company, which was incorporated in 1905 under the laws of Delaware, were parties affiliated with the Chicago & Eastern Illinois Railway Co., and their original plan was that it should be owned jointly by the railway company and the United States Steel Corporation for the purpose, primarily, of furnishing fuel to those companies and their associated interests. The coal company went into the hands of a receiver on March 1, 1909, principally on account of an unremunerative contract with the Steel Corporation whereby the purchase price of coal by the latter was fixed at a maximum which necessarily entailed a loss in operation.

The railway company, upon the organization of the coal company, acquired bonds to the extent of \$450,000 and stock of par value of \$1,700,000 at a net cost of \$981,000. It received no interest on the bonds subsequent to September, 1908, and in 1912 it sold to J. K. Dering for \$225,000 all of its stock and bonds of the coal company. Its net loss from this transaction, including interest, was \$906,420, and this, added to its loss in connection with the other coal company above referred to, makes a total loss of more than \$1,300,000 as a result of its coal deals. If the advances to the coal companies can not be collected, it will result in an additional loss of, nearly \$2,500,000.

#### CHOCTAW, OKLAHOMA & GULF RAILROAD CO.

On April 11, 1902, the executive committee of the railway company authorized the president and the secretary of that company to engage with Speyer & Co., New York bankers, to assume a contract previously entered into between that firm and the Choctaw, Oklahoma & Gulf Railroad Co. covering the purchase of the stock of the latter company. Under this contract Speyer & Co. purchased for the railway company 192,958 shares of common and 118,871 of preferred stock of the Choctaw, Oklahoma & Gulf Railroad Co. Each of these shares was of \$50 par value. Speyer & Co. received from the railways company \$80 per share for the common and \$60 per share for the preferred, or \$22,568,900. Additional shares, 3,592 common and 1,129 preferred, were purchased by the railway company from various persons at a total cost of \$430,415. In order to provide funds for this deal, 4 per cent bonds were authorized by the railway company to the extent of \$24,000,000. These bonds were secured by the capital stock of the Choctaw, Oklahoma & Gulf Railroad Co., and \$23,520,000 in par value of these bonds were sold to Speyer & Co. at 96½ and accrued interest. In the consummation of this transaction the railway company paid a commission of more than \$113,000, a discount on the sale of bonds of \$824,325, and incidental expenses, including attorney's fees and brokerage, of about \$27,000, making a total expenditure of approximately \$24,000,000 for stock of the Choctaw, Oklahoma & Gulf Railroad Co. of a par value of \$15,827,000.

On March 24, 1904, the lines of the Choctaw, Oklahoma & Gulf Railroad Co. were leased to the railway company for a term of 999 years. Since that date the railway has advanced to the Oklahoma company a net aggregate of \$1,293,229.58 as of June 30, 1914. No interest has been paid to the railway company on account of these advances, and the corporate records do not disclose any liability on the part of the Oklahoma company therefor.

Whether or not a loss has been sustained by the railway company as a result of this transaction is not demonstrable for the reason that the accounts of the carrier are not kept in such a manner as to permit the segregation of items by corporate lines. There is abundant reason to believe, however, that the disbursements made by the railway company in acquiring the Oklahoma company are far in excess of the actual value of the property and disproportionate to the returns accruing from the investment therein.

## ROCK ISLAND IMPROVEMENT CO.

The Rock Island Improvement Co., incorporated under the laws of the State of New Jersey, is primarily a creature of the holding companies, designed to acquire on behalf of the railway company transportation equipment and facilities. Prior to June 30, 1914, the railway company had invested in the improvement company nearly \$12,000,000. The purchase of equipment by the improvement company is covered by equipment notes which were guaranteed as to principal and interest by the railway company, the equipment purchased with the funds so secured being thereupon leased to the railway company. The equipment is held in the name of the improvement company until the notes are paid, when the title vests in the railway company.

As an incident to these transactions, the railway company in one instance at least sold bonds of the improvement company at less than par and six months later bought them back at more than par, notwithstanding the general tendency of bonds to approximate par as they approach maturity.

The only justification offered by its sponsors for the existence of the improvement company is that by means of its operations the equipment of the railway company is exempted from the lien of a bond issue of 1898 covering all property then held by the railway company or subsequently acquired by it or its successors.

In the absence of specific figures it is impossible to determine the difference between the ultimate cost of equipment furnished the railway by the improvement company and what such cost would have been had such equipment been purchased directly by the railway company, but it is plain that the procedure entailed an added cost, and that to that extent the railway company sustained a loss by reason of its affiliation with the improvement company.

## AGGREGATE OF LOSSES.

The aggregate losses sustained by the railway company in connection with the foregoing transactions may be summarized as follows:

Expenses of maintaining and housing holding companies, more than .....	\$290,000. 00
Frisco deal, approximately .....	6,500,000. 00
Alton deal, approximately .....	6,370,000. 00
Trinity & Brazos Valley Railway deal, more than .....	4,500,000. 00
Consolidated Indiana and Dering coal companies, at least .....	1,300,000. 00
Contributions or gratuities to officers and directors, about .....	1,000,000. 00
Venner transaction .....	217,000. 00
Miscellaneous and unexplained expenditures .....	72,523. 45

These items show an aggregate loss to the railway company of more than \$20,000,000. In addition thereto it is to be noted that prior to June 30, 1914, the railway company paid to financial institutions, in connection with the issuance of bonds, commissions aggregating more than \$1,600,000, and suffered discounts of more than \$17,000,000.

## INDIVIDUAL PROFITS OF PROMOTERS, OFFICERS, AND DIRECTORS OF THE HOLDING COMPANIES.

The amount of gains accruing to W. B. Leeds, D. G. Reid, W. H. Moore, and J. H. Moore, through their control and manipulation of the railway company, are probably not ascertainable. Reid, when interrogated with a view to ascertaining his profits from the various transactions, explained that he always burned his books at the end of each month.

The quotations placed in the record from the stock market of the New Jersey company stock and the railway company stock showed wide fluctuations. Whatever have been the gains realized by these persons, it is certain that the present holders of the stocks and bonds of the holding companies have that which is of little or no value.

## REPORTS OF STOCKHOLDERS.

Misrepresentation of assets in reports to stockholders appears to have been a practice of the directors of the railway company. On June 30, 1904, a book surplus was claimed for the railway company of \$22,343,955.26. By June 30, 1914, the company conceded a reduction of this surplus to \$6,199,841.08, and even this amount was fictitious.

Thus the railway company included among its assets certificates of indebtedness of the Trinity & Brazos Valley Railway Co., carried at a book value of \$3,694,863.87. The Trinity & Brazos Valley Railway was then in the hands of a receiver and was already facing a deficit of \$8,000,000, with a practical certainty that this amount would increase from year to year. It is apparent, therefore, that this item of more than \$3,500,000 was based upon securities which were known to be practically worthless.

The railway company carried as assets bonds of the Toledo, St. Louis & Western Railroad Co. at a book valuation of \$6,000,000 secured only by stock of the Chicago & Alton Railroad Co., which had a market value on June 30, 1915, not in excess of \$1,600,000.

The railway company also carried as an asset of \$200,000 the stock of the Nebraska Central Railway Co. and the Nebraska Central Construction Co., acquired as an incident to the compromise with C. H. Venner. These so-called securities were reported to the stockholders as having a par value of nearly \$370,000; that they were, in fact, worthless is indicated by an official suggestion on behalf of the Nebraska Central Railway Co. that the commission be advised that that carrier had "no existence except on paper, having no railroad in operation or other tangible property."

The directors also reported as assets the 5 per cent debenture bonds of the Iowa company, which were, in fact, worthless, but which were reported as worth nearly \$6,000,000.

In view of the fact that the reported value of the "securities" listed for the year 1914 was nearly \$18,000,000 in excess of their actual value instead of a surplus of more than \$6,000,000 claimed by the railway company, there should have been shown a deficit of over \$11,600,000.

Another misleading and objectionable practice of the railway company officials was the failure to state on the pay roll the true amounts paid to its officers.

The publication of misleading reports to stockholders can not be too severely condemned, and the individuals guilty of such acts should be subject to adequate penalties.

#### PRESENT STATUS OF THE RAILWAY.

The original articles of consolidation provided that the maximum of indebtedness to which the company might subject itself should not exceed two-thirds of its outstanding capital stock. This maximum has been increased from time to time until the funded debt of the railway on June 30, 1914, was \$238,746,000, an increase of nearly \$175,208,000 over the amount outstanding on June 30, 1901. On June 30, 1914, the total capitalization of the railway company was \$313,741,000. Of this amount only \$75,000,000, or 28.73 per cent, was capital stock on which dividends might or might not be paid, according as the net earnings of the company might or might not warrant. The remaining 71.27 per cent of the total capitalization consisted of interest-bearing debt, including \$3,500,000 of short-term loans, on which interest was required to be paid regardless of earnings.

The Iowa company being wholly dependent for earnings upon the dividends paid by the railway company, the passing of the railway company dividends in May, 1914, resulted in a default of interest on the bonds of the Iowa company. Pursuant to foreclosure proceedings instituted on behalf of the bondholders, the United States District Court for the Southern District of New York ordered the sale in one block of \$71,353,500 par value of the railway company stock deposited with the Central Trust Co. of New York as collateral for the bonds of the Iowa Company.

Some time previous thereto J. N. Wallace, president of the Central Trust Co. of New York, which it will be remembered, was trustee by virtue of the agreement between the holding companies and the railway company, having been selected upon the suggestion of Daniel G. Reid, a member of the syndicate, organized a self-appointed bondholders' protective committee, the members consisting of himself and five other men of his selection. This committee advertised extensively for Iowa company bonds to be deposited in trust with it for the benefit of the bondholders, but after five months succeeded in getting only about \$23,000,000 out of \$75,000,000. Under the terms of the order of the district court the purchaser of the railway stock at foreclosure was to deposit \$1,000,000 in cash or \$10,000,000 in Iowa company bonds. In November, 1914, the circuit court of appeals permitted N. L. Amster, of Boston, a minority stockholder in the railway company, to intervene in the foreclosure proceedings, thereby postponing the sale as scheduled. Following the decision of the circuit court of appeals an adjustment was reached with the Wallace committee in the interest of all undeposited bonds, and an order was entered by the court on December 31, 1914, pursuant to which the stock was sold to Mr. Wallace, who was the only bidder, for \$7,135,350.

## RECEIVERSHIP.

The syndicate decided to put the railway into a receivership. The general counsel of the railway company, at the suggestion of W. H. Moore, a member of the syndicate, drew the bill asking for a receivership and engaged an attorney ostensibly to represent the other side. The bill was placed in the hands of this attorney with the name of the complainant omitted and he was instructed by the general counsel to locate some creditor of the railway company willing to act as complainant. There was an agreement between the general counsel and this attorney as to the parties the latter would recommend to the court as receivers, the general counsel agreeing to instruct the attorney appearing for the railway company to acquiesce in the recommendations so made.

The board of directors of the railway company was not informed of the intention to file a bill for receivership and at no meeting of the board was any authority ever given for such action. Members of the board of directors not in the confidence of the syndicate were kept in ignorance of the fact that such a bill had been prepared. The stockholders had no information of the purpose to put the railway company into a receivership, although a stockholders' meeting was held after the date upon which the receivership bill was completed by the general counsel, and this general counsel attended the meeting. According to the testimony, the bill was completed by the general counsel March 29, 1915, and the fact that it was to be filed whenever desired by those in authority was known only to certain insiders. The testimony clearly establishes the fact that the railway company could easily have paid the debt of \$16,000 upon which the receivership application was based, and that arrangements probably could have been made to meet all pressing obligations of the railway company.

The creditor at whose instance the receivership application was filed appeared as complainant by request. R. P. Lamont, the president of the American Steel Foundries, the complainant, testified that he would not have thought of bringing such a proceeding against the railway company unless he had understood that it would be regarded as not unfriendly, but as a friendly act to oblige the railway company. He only consented that his company should appear as complainant when he was assured that this course was in accordance with the wishes of the railway company and that his company was not to have any care or expense in the preparation of papers or payment of counsel fees. The suit was not a bona fide proceeding to collect a debt, but was instituted to carry out the purposes and schemes of the syndicate controlling the railway.

N. L. Amster, who was elected to the board of directors of the railway company by the minority stockholders at the stockholders' meeting held in Chicago April 12, 1915, believing, according to his testimony, that no sincere effort was being made by other members of the board to finance the obligations of the railway, undertook to assist in raising about \$6,000,000 needed by the railway to meet obligations soon thereafter to mature. On April 16, 1915, he met and conferred with Messrs. James, McLean, and Schumacher, all directors of the railway and members of the executive committee, and discussed the company's finances. These three expressed ap-

proval of his purpose to negotiate for the money. Amster testified that he had secured assurances for the furnishing of the money from responsible Boston bankers on securities which the railway company had. When he arrived in New York on the morning of April 20 to report this fact he went to the office of the railway company and, quoting his testimony, "could not find anybody there that would say anything, except a lot of people moving back and forth. I left the office and found on the ticker that the Rock Island had been put in the hands of a receiver." This, Amster testified, was the first information he had of the receivership or that such a step was in preparation, yet he was a director of the road, and after the stockholders' meeting in Chicago April 12 traveled from Chicago to New York with Roberts Walker, the general counsel for the railway company.

It will be remembered that the bill was completed by the general counsel on March 29, this fact being known only to a special few.

The bill was filed April 20. The records of the New York stock market reveal that the railway stock was inactive until the day this bill was completed—March 29. Then the stock began to be largely dealt in and the price increased from \$20 to \$39 a share. When the bill was filed and receivers were appointed the stock dropped from \$39 to \$20 a share.

The daily sales and the selling prices of the market stock from March 22, 1915, to April 20, 1915, are shown below:

*Daily sales and selling prices of the Chicago, Rock Island & Pacific Railway Co. stock as reported by the Wall Street Journal.*

Date of sale.	Number of shares sold.	Selling price.	
		High.	Low.
1915.			
Mar. 22.....	400	21½	20½
Mar. 23.....	2,700	21½	20
Mar. 24.....	2,850	22½	21½
Mar. 25.....	900	22½	21½
Mar. 26.....	7,500	21½	19½
Mar. 27.....	5,400	21½	19½
Mar. 29.....	28,380	26	19½
Mar. 30.....	73,576	31½	28
Mar. 31.....	106,800	36½	31½
Apr. 1.....	62,642	33½	28½
Apr. 2 (holiday).....			
Apr. 3.....	18,700	29½	28½
Apr. 5.....	15,000	30	27½
Apr. 6.....	6,200	29½	27½
Apr. 7.....	41,000	32½	28
Apr. 8.....	14,250	32½	30½
Apr. 9.....	68,900	35½	31
Apr. 10.....	68,000	39	34½
Apr. 12.....	18,600	36	34½
Apr. 13.....	16,556	35½	32½
Apr. 14.....	78,000	28½	34½
Apr. 15.....	45,600	38½	35½
Apr. 16.....	32,900	38½	35½
Apr. 17.....	16,100	38	36½
Apr. 19.....	37,700	33½	33½
Apr. 20.....	251,400	32½	21½

Total capitalization, \$75,000,000, represented by 750,000 shares.

Total sales within 30 days preceding receivership, 1,019,584 shares.

The sales aggregated more than one and one-third times the total capitalization of the railway.

It is a forceful commentary on the methods by which a great railway may be manipulated into a receivership when it is noted that the general counsel, after drawing the bill for a receivership, sold his stock, and the local counsel, who represented the railway company in the receivership proceedings, owned no stock in the railway company, and that none of those directly participating in the receivership proceedings had any financial interest in the railway company. The real owners of the railway, the stockholders, the security holders, and the directors, except those composing the syndicate and in its confidence, were in ignorance of the receivership application. Mr. Mudge, former president of the railway company, is one of the receivers.

The general counsel for the railway company, who planned the receivership in obedience to the will of the syndicate, is now counsel for the receivers.

The property of the railway company will be called upon for many years to make up the drain upon its resources resulting from transactions outside the proper sphere in which stockholders had a right to suppose their moneys were invested. This record emphasizes the need of railway directors who actually direct. There are too many passive directors who acquiesce in what is being done without knowledge and without investigation. A director of a railroad is a quasi public official who occupies a position of trust. A director who submits blindly to the exploitation of his company is a party to its undoing and he should be held responsible to the same extent as if he had been a principal instead of an accessory before the fact. The greater his prominence the greater his responsibility and the greater his dereliction. Obviously, a man of large affairs could not attend to all the details in intricate transactions, but it is inconceivable that a director of ordinary business prudence and sagacity would sanction large expenditures without an inquiry as to the purposes of such disbursements. So long as this situation exists, however, it suggests the need of a law to charge such directors with individual responsibility for the dissipation of corporate funds.

The Clayton Antitrust Act, which becomes effective October 15, 1916, will make it unlawful for any person at the same time to be a director in two or more competing corporations, any one of which has a capital, surplus, or undivided profits aggregating more than \$1,000,000, but common carriers are expressly exempted from its application. It should be just as grave an offense for an official of a railway to be faithless to his trust for financial gain as it is for an elected official of the Government to betray his trust for money reward.

By this case the need of some limitations on the issuance of stocks and bonds by common carriers, whether directly or through holding company devices or otherwise, is again demonstrated.

By the Commission.

GEORGE B. MCGINTY, *Secretary*.

Mr. THELEN. Referring now to the M., K. & T., familiarly known as the "Katy," I have here a clipping from the New York Times of November 23, 1916, which shows such a keen understanding of railroad financial problems, and which also shows so clearly the real cause of the troubles of that railroad, that I shall read just a para-

graph or two. The heading is "\$26,636,000 needed to finance M., K. & T."

Hallgarten & Co. and J. & W. Seligmans & Co., bankers of New York, who undertook a year ago the reorganization of the Missouri, Kansas & Texas Railway, have made public their first formal report covering the activities of the engineers employed by them. The existing receivership is charged, in large measure, against conditions dating back 25 years, when the road was reorganized without foreclosure. The plan followed then left the property not only in poor physical condition and without provision for its rehabilitation, but also rendered it difficult to secure new funds, since the first and second liens, extending over nearly all of the road, were closed mortgages at an average rate of \$43,000 per mile.

So it was impossible to secure from the sale of bonds any funds for additions and improvements in excess of the total of \$43,000 per mile.

The report states that, based upon good practice, the fixed charges left in 1891 were more than twice what they should have been. The closed mortgages made later adequate financing impossible and necessitated the issuance of divisional, extension, and terminal bonds and the construction of new lines under independent mortgages by companies organized and controlled by the Missouri, Kansas & Texas Railway. As such resources became exhausted—you can not continue selling bonds at a discount without your resources becoming soon exhausted, unless you bring in money from some other source. The report continues: As such resources became exhausted, the physical property fell below the traffic requirements and led to the accumulation of a floating debt in the form of short-term notes, the impending maturity of which is the immediate cause of the receivership.

Here we have an honest and intelligent statement as to what caused the troubles of this railroad. When it was originally organized they did not build a sound financial structure. If you do not build a sound financial structure for your utility you are going to have trouble later as sure as fate. In my judgment, one of the most important functions which either Federal or State Government can exercise is to insist that the financial structure of the utility be such that the utility has a chance to succeed, and that it will not later find itself in the necessity of going through receivership or reorganization.

I have gone into these matters, gentlemen, not for the purpose of adding to the troubles of the railroads. They have troubles enough. If the truth be told, I think they are largely of their own making; but, nevertheless, the fact is that they have their troubles. But here is the situation with which we are confronted: We have coming before this committee the question of what are the causes of impaired railroad credit. We find the carriers presenting their views. They charge that the State commissions are responsible. We think that is one of the most ridiculous charges ever made. We have believed, however, that it is not sufficient for us to draw your attention to what the States have done, and that they are not responsible. We think it is necessary, in addition, in a constructive way, to draw the attention of this committee to the real causes of impaired railroad credit. These causes are found in unsound financial structures, in the construction of railroads where not needed, in attempts to pay interest and dividends on excessive issues of securities, and in financial mismanagement of these properties by the financiers and executives in responsible charge thereof. There may be other causes, but those, I believe, from my experience, are the most important causes.

That being the case, the next question which presents itself is the question of constructive policy. What can be done in a constructive way, so as to prevent this sort of thing from happening in the future and so as to do what government can do to insure greater financial stability for these railroads? To my mind, the first constructive thing is to provide for adequate supervision and regulation by the Federal Government of not merely the stocks and bonds and notes of all these carriers, but also of their consolidations, their mergers, their sales, their mortgages, their encumbrances, and their leases. This might either be done concurrently with the States or exclusively by the Federal Government, just as the Congress may deem to be wise. If that is done, the few horses which are left in the stable will be reasonably safe. Of course, we can not recover the horses which have escaped. This brings me to the next question, What are we going to do about what has been done in the past? I believe, frankly, gentlemen, that it will be necessary for some of these railroads to reorganize from time to time and to put themselves on a sound financial basis. They can not expect the public to bear those burdens for them, because it has been the fault of their own executives and financiers. With this action looking to the future—that is, the control by the Government of the issue of these securities—and with reorganizations on the part of the railroads themselves, undertaken where they find it necessary, some relief will be given.

I believe also that it is time for the railroads to stop complaining. They have the finest earnings that they have ever had. It would be far better for them if they stopped crying calamity, if they came out into the sunshine, as I suggested this morning, and if they went to work and ran their railroads. They are having splendid prosperity. Why not be optimists instead of pessimists? They will get a good deal further if they attack the problem in that way. Finally, I say frankly that it is the duty of all public officials, both State and Federal, to do what they can in a sympathetic and constructive way to help these railroads, if they show good faith on their part. The greatest service which the public authorities can render these railroads is to assist them where necessary, to build financial structures which shall be sound instead of being unsound.

I stated at the beginning, gentlemen, that we have come here in a spirit of helpfulness. Now that I am about to conclude, I hope you will think that we have done exactly what we said that we would do.

Mr. ADAMSON. Mr. Thelen, I unfortunately was out during a portion of your discourse, and while I can not ask you any questions I can ask you if in any part of your discourse you have put in the record a review of what effect Federal legislation has had, and whether or not it has failed in its efforts to regulate the railroads?

Mr. THELEN. I will say, Judge, that before you came in I made a general statement as to the effects of State regulation upon the carriers and also upon the public. As far as the action of the Federal Government is concerned, I take it that the officials of the Federal Government will be amply able to take care of themselves. I have not undertaken—

Mr. ADAMSON. I allude to the complaint that all regulation has proven a failure.

Mr. THELEN. I went into that matter to some extent, Judge, before you came into the room.

Mr. ADAMSON. I do not care to have you repeat it, if it was gone over.

Mr. THELEN. In concluding, gentlemen, I simply wish to say what I said at the beginning, that if there is any special problem that occurs to you, on which you want an investigation made, or on which you want a study made, the Railroad Commission of California is, I think, well equipped to do that work for you. We have our experts along all the various lines of public-utility regulation. They are men of intelligence, thorough students of public-utility problems, and if there is anything that we can do for this committee along that line, we shall be only too glad to do it. We want to help you. I wish to express my appreciation to you for allowing the national association to appear here and to make this opening statement for the public.

Mr. SIMS. I understand that you expect to come back at some future day.

Mr. THELEN. I can either come back here or invite you to come out to San Francisco. I am ready at any time and place that will suit the convenience of the committee.

The CHAIRMAN. Mr. Brookhart, will you now proceed?

#### **STATEMENT OF MR. SMITH W. BROOKHART, OF WASHINGTON, IOWA.**

Mr. BROOKHART. Mr. Chairman and gentlemen of the committee, I am very grateful that you have consented to hear me at this time. I have been waiting for several days, and I assure you that a look at the frost on the blue grass of Iowa would seem good to me again now. I have had some doubts that you would be able to endure this kind of a session, and had it not been that I had read of something over in the Senate that they call a filibuster, I would hardly like to attempt it, but if the Members of the House can stand it I have no doubt the Senators will, after the record they have made on that line heretofore.

Mr. ESCH. Whom do you represent, Mr. Brookhart?

Mr. BROOKHART. I will state in a moment. In 1906 I was appointed by the governor of Iowa to attend the rate convention in the city of Chicago, known as the Interstate Commerce Law Convention. The purpose of that convention was to support national regulation of railroads, and especially the law then proposed, giving the commission power to fix rates. Up to that time no such power had existed, as determined by the Supreme Court.

This convention was in 1906. Shortly after that I was associated with Mr. Thorne in starting the investigation against the Standard Oil Co. that disclosed the discriminations of rates in its favor, and since then I have been associated with him and the Iowa commission in most of the big rate cases in some capacity. I presume it was on this account that I was invited by the committee to appear and present this question of Government ownership of the railroads. In the beginning I was opposed to Government ownership of railroads, even when Mr. Bryan came back from Europe and suggested that it would be the only solution because of the constant resistance of the railroads against regulation. Even then I looked upon his suggestions as rather

a socialistic vagary, but in these rate cases, digging deep into facts of the financing of railroads, their returns, of the difficulties of competition, and all those other questions, hard facts have changed my mind and I have reached the conclusion that Government ownership is not only the ultimate solution but that it is a desirable and present solution, and I shall present the matter to you largely from the fact of digging out the ultimate economic facts as they appear to me in considering this question.

Now, gentlemen, in order that my remarks may be more brief and more concise, I am going to read my statement to you largely as I have prepared it. However, I will at times depart from it and discuss some of the questions that are presented here.

Before private parties can own, construct, or operate railroads the Government must grant them the power to exercise certain sovereign functions. Such are the rights of eminent domain and of taxation as exercised in the rate-making power. For this reason freight rates have been properly termed a tax. (I. C. R., 1903, p. 14; *Blake v. Rd. Co.*, 19 Minn., 368; 3 Paige Chancery, N. Y., 74; 4 N. Y. Rep., 431; Stickney "The Ry. Problem," pp. 163-242-6; Brooks Adams Sen. Com., 1905, p. 2924.) And for the same reason every court in the land holds a railroad to be a common carrier and a public highway. "The right to make roads and levy toll is a prerogative of sovereignty and in the hands of a subject is a franchise, a privilege or immunity of a public nature, which can not be legally exercised without legislative authority. \* \* \* The right to make and maintain a railway and take tolls or fares is such a privilege. A railroad is but an improved modern highway." It therefore follows that ownership and operation of railways are not only proper functions of government, but are the primary standards to which all other systems should be compared. Our Government has granted to private corporations the power to levy taxes for railway purposes far greater in amount than all of the taxes levied by the Congress of the United States. For the most part this vast taxation has been without representation and until recent years it has been without regulation or restraint. Even now the power is lodged in the carriers in the first instance and the Interstate Commerce Commission intervenes upon complaint. Has the surrender of this vast power into private hands been the part of wisdom? This brings us to the direct consideration of the feasibility of Government ownership.

Under the head of efficiency and economy I desire to consider three items. (1) The superiority of Government credit. (2) The saving of unearned increment in real estate values. (3) The saving of the waste of competition.

There are many other items of economy under Government ownership, but these three are greatest.

We often hear it said that governments are proverbially extravagant. However true or however false this alleged proverb may be, it will be conceded that in the matter of interest rates governments are more economical than private persons or corporations. When it comes to borrowing money and paying interest rates the Government is our most efficient agency. Its credit is better and it can borrow the money cheaper than anybody else. This means it could borrow

the money to own the railroads at a lower rate of interest than the companies are now paying, and would make a great saving upon this item. In 1913 the entire net capitalization of all our railroads was little less than 15½ billion dollars. (Statistics of Railways, I. C. C., 1913, p. 36.) This includes all stocks and all bonds, watered and otherwise, with duplications eliminated. It is generally stated in the public prints that our railroads are capitalized at 20 billion dollars. I have even seen this figure used by such eminent authority as Sir George Paish and President Ripley in opposing Government ownership. But this is error. It is the gross capitalization and includes over 4 billion dollars of direct duplication. Subtract this and the correct amount is less than 15½ billion for 1913. This deducts nothing for water stocks. For the purpose of this presentation I will assume the railroads were worth the full capitalization and that it would cost the Government 15½ billion dollars to take them over in 1913. There is no way to tell the exact rate of interest the Government would have to pay. In October, 1912, Mr. B. F. Yoakum estimated it as 2½ per cent. In 1914 Sir George Paish estimated it at 3½ per cent. I will split the difference and use 3 per cent. At that rate the whole interest charge which the Government would have to pay would have been 460 million dollars. All of the other net earnings would have been saved and the amount is over 450 million dollars after allowing for all taxes, upkeep, and maintenance expenses of all kinds. (I. C. C. S. of R., 1913, p. 48.) Here is the summary for that year:

Interest on funded debt.....	\$404, 817, 955
Interest on unfunded debt.....	31, 191, 623
Amortization of discount on funded debts.....	2, 579, 103
Appropriations for dividends, reserves, betterments, etc.....	471, 801, 973
<b>Total net earnings.....</b>	<b>910, 390, 654</b>
<b>Interest charge under Government ownership.....</b>	<b>460, 000, 000</b>
<b>Saving because of superior Government credit.....</b>	<b>450, 390, 654</b>

The above does not represent all of the saving upon this item of Government credit. The same table on the above page, 48, shows a general balance of \$1,115,028,899. This is a general surplus accumulated over a series of years, and if the Government owned the railroads it would all have been saved. It is impossible to tell the exact amount of this surplus that should be assigned to 1913 or any other particular year. This table shows a decrease of surplus for 1913, but that is due to bookkeeping. A comparison with the table for 1912 (I. C. C. S. of R., p. 51) shows an increase and the cause of these discrepancies is there explained. If we assign one-fifteenth of this surplus to 1913, it would amount to about \$75,000,000 and raise the annual saving because of better Government credit to over \$525,000,000.

There is another special reason why this should be done. In 1913 the railroads were asking increased rates. An increased expense account would help their showing of poverty and thus help get the higher rates. It is, therefore, a remarkable and accommodating coincidence that the expense of maintaining way and structure and of maintaining equipment increased the enormous sum of \$120,779,276. (I. C. C. S. of R., 1912, p. 54, and 1913, p. 52.) This never happened before except in 1910, when they were asking advanced rates, and it

was continued in 1914, when they were still asking advanced rates. It would therefore seem to be a regular phenomenon that precedes an advance-rate case. This means either that they neglect maintenance over a series of years and then catch up all at once in order to use the unfavorable comparison to secure higher rates, or else they use large sums for betterments and charge them to maintenance for the double purpose of improving their properties at the expense of the public and at the same time securing higher rates. Perhaps both are true in a large measure. As a concrete illustration of this policy, in 1913 the Pennsylvania system increased its allowance over 1912 for renewals and depreciation of locomotives an average of 110 per cent per locomotive. This single item amounted to over \$2,000,000. Even if 1913 depleted the surplus on the books, still it more than supplied its share in fact by taking care of so great maintenance expense.

The plea is sometimes made that many of the items of this surplus are mere bookkeeping and can not be figured as a saving under Government ownership. This plea can not be entertained. In all of the rate cases the companies always present the properties bought from these items as a part of their property investment, and they demand a return upon them. Under the system of regulation they are charged against the people and therefore under the system of Government ownership they would be saved to the people.

It must also be remembered that I have figured the Government's interest charges upon the basis that the roads would cost 15½ billion dollars. That this is too high there is little doubt. An investigation of the market value of the stocks and bonds in October, 1913, showed that all of the stocks and all of the bonds of all of the railroads could have been bought on the market at that time for a little less than 14 billion dollars. This would reduce the Government interest charge by over \$40,000,000. With all of these facts in view it is safe to conclude that Government credit would save over \$500,000,000 per year even if the Government were required to pay 3½ per cent for the money to buy the railroads. With the enormous earnings of 1916, and as far as we have gone in 1917, fiscal year, this saving would be increased to over \$600,000,000 per year.

It would now be well to notice the claims of the opponents of Government ownership upon this proposition. They all admit the Government could borrow money at a lower rate of interest. At present the average rate the railroads are paying is about 4½ per cent, while the average rate paid by the Government is only 2½ per cent. (Dunn's book, p. 58.) While they admit these facts and also admit that net earnings are much greater than interest rates, they still figure the saving because of superior Government credit at about one-fourth of my claims. In this connection I desire to call attention to the book entitled "Government Ownership of Railways," published in 1913 by Mr. Samuel O. Dunn, editor of the *Railway Age Gazette*. This book was distributed by the railroads free of charge to newspapers all over the country. The identical copy which I present here was so received by a little paper which I publish at Washington, Iowa. The inscription on the paper cover says, "The author is one of the foremost authorities of America on railroad questions, and his treatment of the subject may be regarded as conservative, judicial, and fair." I concede the eminence of this

author, but I deny that he is judicial and fair. He is, in fact, the official mouthpiece and advocate of the railroads, both for private ownership and higher rates, and I shall use this book as an example of the partisan and unfair methods of the railroads in trying to develop public sentiment against Government ownership.

On page 68 he estimates the cost of the railroads to the Government in 1910 at \$16,000,000,000 and the rate of interest at  $3\frac{1}{4}$  per cent. This would make the annual interest charge \$560,000,000 per year, or \$100,000,000 higher than I figure it. This difference arises because Mr. Dunn takes the extreme view of private ownership; but his unfairness appears at the next step. When he comes to compute the saving he considers only the net interest and dividends paid by the railway companies, which total only \$680,000,000. Subtracting the above interest charge would leave a saving of only \$120,000,000. Mr. Dunn took his figures from page 60, Statistics of Railways, Interstate Commerce Commission, 1910. He only found two items of interest and one of dividends to consider, but on the same page is another item of \$222,000,000 which he omitted. The table plainly shows that this was a part of the net revenue available for adjustments and improvements. A note shows that all of this would have been saved to the Government except about \$91,000,000—\$86,000,000 dividends from surplus and \$5,000,000 deficit weak lines—and this would add \$131,000,000 to Mr. Dunn's \$120,000,000 and make the total saving \$251,000,000 on his own basis. If we add to this a proper assignment of general surplus and consider the increased maintenance charges of over \$109,000,000 for this year—this was the 1910 year—all of the discrepancies between my own conclusions and those of Mr. Dunn's book are explained.

Mr. Dunn also says, page 63, that capitalization of switching and terminal companies is excluded from his consideration, because no figures are given by the Interstate Commerce Commission. On page 52, Statistics of Railways, Interstate Commerce Commission, 1910, in the very table from which he took his figures, I find included an item of \$136,634,040 for "Securities of switching and terminal companies not represented in figures first above stated." These great mistakes, all on the side of private ownership, show the unfairness with which the most eminent authority may sustain his cause.

In reference to this subject of credit, gentlemen, I now desire to depart from my written brief to say that I believe that before I am through you will find me the strongest defender of the credit of the railroads of any that has appeared before you. Perhaps it would be to my interest and to the furtherance of my argument to admit that they have failed, that their credit is broken down, and that it is now a corpse, dead, and that resurrection would be the only remedy, because the only institution that could bring about a resurrection would surely be the Government; but I am standing upon the facts in this matter, and I want to present the question of credit to you as I see it in this connection.

Mr. Thom, for the railroads, has asked a return of 6 per cent and 3 per cent for surplus, saying that it would take something of this kind to restore the credit of the railroads. I first met this credit argument in the 1910 advance rate case: that was when the big calamity howl began. The western railroad attorneys and railroad presidents appeared before the commission and sang that song with great force

and vehemence at that time. Gentlemen, here is a remarkable fact, and I want to tell you why: As Mr. Thom has said, the rate cases have all been decided in the more prosperous years, and here is the reason why: The railroads themselves have selected the years in which they would ask for an advance. They selected 1910 as the first year, and the expense accounts seem to have been properly and scientifically and efficiently arranged, because they increased \$109,000,000 over the preceding year. That seemed to have been taken care of first rate, but the prophets could not see six months into the future, and before the case was over the reports for 1910 came in, showing the greatest earnings the railroads had ever had in all their history, and they lost that case; the calamity howl did not win that year. Then they stepped back and waited a couple of years or so, and in 1913 they made a new start in the eastern advance rate case, and again they got into identically the same trouble. The prophets of calamity failed, and 1913 came up as another big year, next to 1910 the greatest, and before the case was over they had to face that fact.

That case ran along over into 1914. The expenses increased for 1913, \$120,000,000 over the preceding year, and they never go back, gentlemen; when they make one of those horizontal rises, it stays there. Then for 1914 the increase was \$20,000,000 more over 1913, and the case was decided just before the war began in 1914, and they lost that case, as you will remember, on the first decision. The eastern railroad presidents were forced to admit, on cross-examination, that the 35 roads in the case had earned and were earning at that time a net of 8.07 per cent upon all their stock—water and all—and that defeated their claim for an advance. Then the war broke out and then this calamity howl reached its apex; I think it was the loudest and noisiest and most persistent at that time. The war hit some other lines of business and other people lost because of its beginning, but the railroads seemed to think they should come in and take care of their losses as well as their own; so they began, and they did alarm the country about the future of the railroads. They even called on the President of the United States, and succeeded in alarming him and he gave out a statement practically indorsing an increase of the rates at that time, and the case was reopened and speedily tried and, upon the hearing, about one-half of the 5 per cent advance was granted in the East, or perhaps about 45 per cent of the tonnage. This encouraged the western roads, and then the third advance rate case was begun immediately; but before it could be reached for trial in March of 1915, the war tide had changed things, and instead of the apprehension because of the war, instead of all that great talk of calamity, the first witness, President Schaff, appearing on the stand said they were not asking this increase because of a war calamity. The very reason why the roads in the East had secured their advance was now abandoned, because these prophets of dire calamity for railroad credit had again failed and the earnings of the railroads were mounting upward as they never had before, even beating the years of 1910 and 1913. They also lost this case.

In the course and during all of these calamity talks in these different hearings before the commission, each time a new set of representatives appeared, and this is the first time I have had the honor of meeting Judge Thom, who now comes with the same old story that I heard over and over again, telling it to this congressional committee.

Every time they want higher returns they ask higher rates; that is, the thing that will restore their credit. It was asked here what they were going to do with that 3 per cent surplus, and I have to say that after listening attentively and reading the record, it leaves me in the fog. I can not tell what is going to happen to this 3 per cent surplus. I heard Mr. Bryan's statement and I understood distinctly what he meant by "surplus." He proposed that they should have a surplus of 25 per cent of their capital stock; to let them pile up a surplus that high and then stop it, and that they should use that 25 per cent for the purpose of making up the shortages on the lean years. Now, that is clear and distinct and plain and anybody can understand what is going to happen to that, and I will say to you, gentlemen, that I do not think that is an unreasonable surplus, if it means 25 per cent of the capital stock, and I want to call your attention to this fact, that in 1913 they had a billion one hundred and fifteen million dollars of surplus already piled up, which would be about 20 per cent on all the capital stock outstanding at that time, so on an average they are almost up to the limit on the surplus right now; perhaps they are.

What do the railroads propose to do with this 3 per cent? Is that to go on perpetually and eternally, forever? If a lean year comes along and takes 1 per cent out, is the other 2 per cent to be added in? Is that all they are to lose out of it? If that is the meaning, gentlemen, they are asking for a straight 9 per cent return; that is all it means. If they are going to allow this to accumulate until it amounts to 25 per cent of the capital stock, and then stop it, and use the whole amount simply to make up for lean years, there would be some reason to that; but they do not propose that and have not made that clear. In fact, they have said that after the surplus is earned, it belongs to the stockholders. That means that out of this surplus they want to use it in the future as they have done in the past—to build additions and betterments—and they want to ask the public to build up their roads and improve them, and after we have paid the money, they own the road; and then they ask us to pay dividends—rates high enough to yield them dividends upon the very donations which we have made into surplus. That is what it means; and in the valuation which is going on by the commission now that point is of very great importance, and I understand that the commission is not able to or has not separated the building of additions and betterments out of surplus from those built out of new capital, and that is a thing that the Congress of the United States should have its attention focused upon and should consider very seriously, because it means a great burden on our people forever afterwards.

Mr. Thom said that their credit was impaired because of the new arrangement of capitalization. The margin of safety, as he said, has been reduced. It is true that the proportion of bond issues to stock issues has greatly increased, but I desire to show you a situation here that in spite of that—in spite of all this calamity howl during all these years, in spite of all these irregularities of financing that Mr. Thelen has shown you in detail, and every statement of which is true—in spite of all those things, this credit of the railroads of the United States is so great that for 14 years it was steadier than the credit of the Government of the United States.

I do not mean by that they could borrow money cheaper than the Government of the United States, not at all, but I mean that

the fluctuations over a period of 14 years of actually incorporated lines showed a little less fluctuation of the railroad credit than of the United States combined with the Governments of England, of Germany, of France, and of the 20 largest cities of the United States.

In the western advance rate case we made an exhaustive investigation of this credit question. Mr. Norton, who is now an editor on the Wall Street Journal, was the expert whom we employed to do that. He drew a picture of the results of his investigation—a chart. The lower line on this chart represents the credit of the four great Governments I have named and of the 20 largest cities in the United States. The average credit, beginning in 1900 and going up to the end of 1914, to January 1, 1915. Here is the per cent that the average of those governments and cities had to pay during that period, and all the fluctuations are shown. This per cent will be a little higher than the Government would have to pay, because the cities—I do not mean the utilities; I mean city bonds themselves; that is what I am talking about now—they pay a little higher rate than the Government.

The next line up here is the group of northwestern railways, and I will read the names of them. They are: The Chicago, Burlington & Quincy; the Chicago, Milwaukee & St. Paul; the Chicago & North Western; the Chicago, St. Paul, Minneapolis & Omaha; the Great Northern; the Minneapolis & St. Louis; the Northern Pacific; and the Union Pacific. Those were the ones that were averaged in this next line, and that shows what their funded debt cost them during those same years as examined and figured out by the actual market quotations during all those times.

The third line at the top is the southwestern group of railroads, and I will read those. They are: The Atchison, Topeka & Santa Fe; the Chicago, Rock Island & Pacific; the Colorado & Southern; the Kansas City & Southern; the Missouri, Kansas & Texas; the Missouri Pacific; the Southern Pacific; the St. Louis & San Francisco; and the St. Louis & South Western.

There are the two groups. I regret for the purpose of my presentation that this does not show the Government credit alone as compared with the railroad credit. This shows it almost 1 per cent higher than the Government credit would be alone, but nevertheless it helps to illustrate the general parallel I am making that Government credit is always lower than the corporation credit, and there are those three lines. I am going, Mr. Chairman, to pass this chart to the committee and you can pass it along. It is easy to see how the parallel runs. Here is where the Government's credit started and there is where it ended. Here is where the northwestern railroads started and there is where they ended.

The rising interest rate was not quite as much for that group of railroads as for this combination of governments and cities, and individually it is true of the governments, and the same is true generally of the southwestern group of railroads which had so many of these bad financing propositions.

Mr. ESCH. You might have it printed as a part of the record.

Mr. BROOKHART. If it could be put in the record, I would desire to have it appear.

(The paper referred to is here printed in full as follows:)



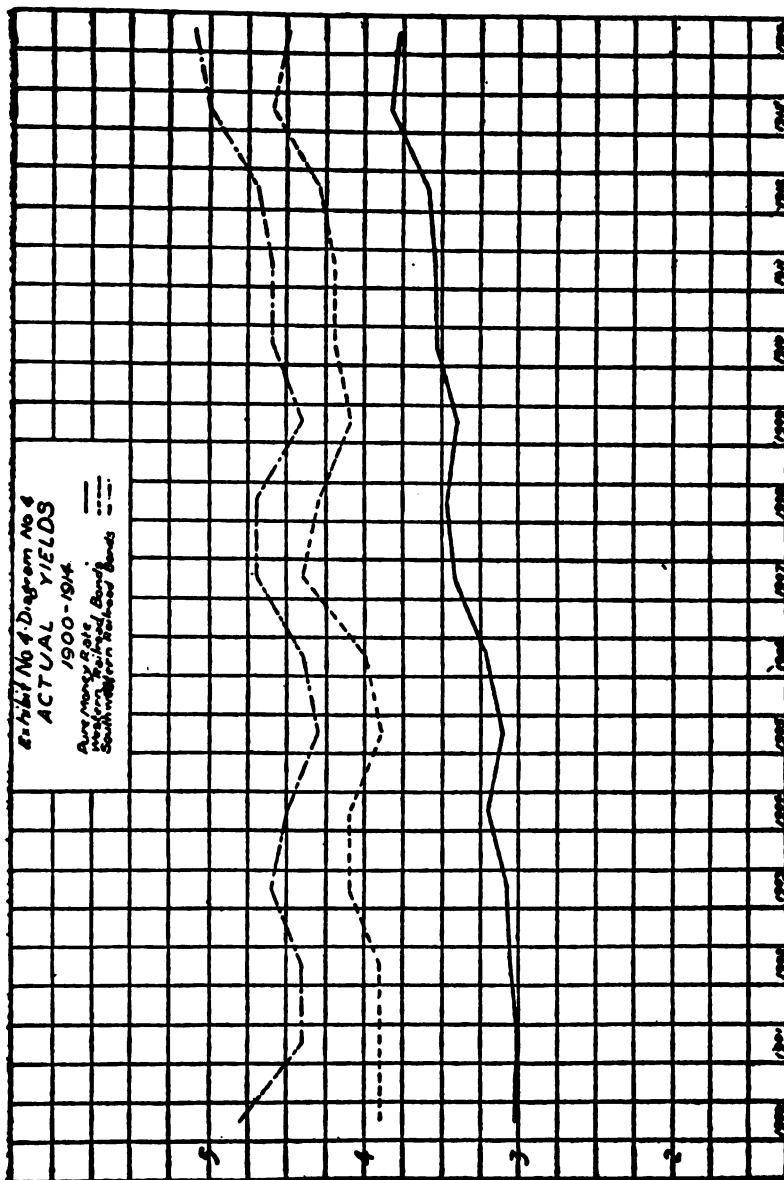


CHART Z.

Now, gentlemen, I will say further that was the exhibit that was put in the rate cases, and the Interstate Commerce Commission found the facts as stated there to be true in its findings and it was not seriously controverted in any way.

As to the stocks. That was the other feature of capitalization. We will see what happened to them at the same time. I have another chart, prepared on the same line by the same expert, and the 100 per cent and the 200 per cent, and so on, was given, and this was compared with industrials. What happened to the railroad stocks of these groups of railroads compared to some of the best industrials in the United States? You will see the heavy black line, the railroad stocks, started lowest; they passed industrials, got away up above there. There were more fluctuations in them, but they earned considerably above the industrials. So that both the bonds and stocks of railroads during that period of 14 years—the bonds stayed steadier than our Government securities and the best municipalities, and stocks steadier than our best industrials.

Mr. Thom gave you some figures upon the credit of the earnings of the railroads as one reason why this credit was impaired, and he claimed—he took the net earnings from the year 1906 to the year 1910, inclusive, then the earnings from 1911 to 1915, inclusive, and he found them to be 5.25 per cent for the first years and 4.56 per cent for the next five years, ending June 30, 1915. That showed a decline of about three-fourths of 1 per cent in the earnings in five years. That tends to illustrate the claim that earnings were declining, do you not see?

Gentlemen, I will tell you what I did. I just moved the thing down one year. I took the years from 1905 to 1909. He had the years 1906 to 1910. I just moved it back one year and the average was 5.04 per cent. Then I took the years 1910 to 1914, the next five years, and the average was 5.64 per cent, so by just sliding it forward one year you get an advance of sixty one-hundredths of 1 per cent.

The experts who select these years are very expert gentlemen, and it is one of the difficulties in the rate cases, in which we had to watch them, to watch the selections they made. If a combination was in favor of the roads, they were so expert that they never failed to find it.

I tried to bring that up to 1916, to see what the result would be. I went to the commission to get the figures, but the capitalization, etc., is not up to date, but taking the great earnings of that year you will find there was no decline when you bring up that five years.

Here is another thing. I found in the latest figures from the commission that the total net earnings of the railroads earning \$1,000,000 or more for the two months of July and August—that is, the first two months of the fiscal year—were \$204,482,000. In 1915 they were only \$161,522,000. There is an increase of about \$43,000,000 for two months, and that increase is on top of another increase over the preceding year of perhaps \$25,000,000 more. In that two months the increase in the revenues of these railroads was enough to pay as much as they have estimated the entire expense of the Adamson law would be in putting the eight-hour day into effect.

Here is another proposition: These figures of earnings that were given you by Mr. Thom were upon the whole capitalization of the

railroads. You are not particularly concerned about the return on the whole capitalization. The return upon the bonded or funded part of this capitalization is fixed by contract. The people of the country are not going to be asked to pay a commission to the railroads for getting that first-mortgage loan on a public utility of this kind. The cost of that was the interest paid for that part of the capitalization. The important part, and the place where they are to get the return, is upon the stock capitalization; so why not in these comparisons, use the net earnings upon the stock values?

For instance, I took 1913, which was the only record I had before me, and in the figures given by Mr. Thom the earnings on the whole capitalization were only 5.94 per cent, but the earnings on all the capital stock, water and all, after paying all the interest on all the bonds, was 8.31 per cent.

Gentlemen, you can see by that why net earnings may be increasing on the capital stock and declining on the whole capitalization, so we must watch out for the comparisons of figures. They have deadfalls in them.

The next subject I desire to consider is the proposition of the unearned increment of real estate. The railroads are constantly capitalizing unearned increment and claiming a return upon it. This claim has been resisted, but the Supreme Court of the United States has finally decided that the railroads ought to be satisfied to receive a return upon the increase in the value of the real estate. (Minnesota Rate case, *Simpson v. Shepard*, 230 U. S., 377.) This theory constantly adds the unearned increment to the value of railroad property. Under private ownership this added value belongs to the stockholders. Under Government ownership it would be a saving to the Government. It is impossible to tell the exact amount of this saving. The record of the past will not be known until the valuation of the railroads is completed. I can only give a concrete example and estimate the total. In the Minnesota Rate case, above cited, the master determined the cost and the present value of the real estate for terminals of the Northern Pacific in the cities of St. Paul, Minneapolis, and Duluth.

Up to 1908 he found the original cost to be \$4,527,228.76. He found the present value at that time to be \$17,315,869.45. This finding was not approved by the opinion of the Supreme Court, but it did announce a theory that allows about thirteen and one-third millions, or nearly 200 per cent. advance. If the Government had owned the Northern Pacific, every dollar of this would have been saved. Under private ownership the stockholders not only get a reasonable return upon their original investment, but in this instance they got a present of over eight and three-quarter million dollars, and are allowed to collect a return upon it from the public forever. The same thing has happened with every railroad in every city of the United States. In the Western Advance Rate case, 1910 (20 I. C. C. Rep., 243), it was found that the increase alone of the land values of the Burlington Railroad amounted to three-fifths of the total original investment of the entire Burlington system.

The CHAIRMAN. State that again, please.

Mr. BROOKHART. I will repeat that. I am glad to have that noticed, because it means much in this proposition.

It was found that the increase alone of the land values of the Burlington Railroad amounted to three-fifths of the total original investment of the entire Burlington system. The figures will come later.

On page 340 Commissioner Lane, now a member of the President's Cabinet, in writing the unanimous opinion of the commission in referring to the claims of the Burlington Railroad that it should be permitted to continuously increase its rates because of (first) betterments out of income, and (second) increase in land values, stated:

If the position of the Burlington is sound and is a precise expression of what our courts will hold to be the law, then, as we are told, there is certainly the danger that we may never expect railroad rates to be lower than they are at present. On the contrary, there is the unwelcome promise made in this case that they will continuously advance. In the face of such an economic philosophy if stable and equitable rates are to be maintained, the suggestion has been made that it would be wise for the Government to protect its people by taking to itself these properties at present value rather than await the day, perhaps 30 or 50 years hence, when they will have multiplied in value ten or twenty fold.

The same thing has happened as to all of the right of way of all of the railroads. The amount of unearned increment already capitalized is a fabulous sum. It will be more in the future than in the past. The growth and development of our country is only begun. Eminent authority has estimated the future unearned increment of our railroad real estate at an average of at least \$300,000,000 per year. The increase in land values for one railroad has been estimated by the Interstate Commerce Commission. This railroad was accepted as typical of the western territory, it being the Burlington. The increase alone amounted to \$150,000,000, that company having a capitalization at that time of \$320,000,000. Of course, the capitalization was higher than the original investment, but \$150,000,000 was three-fifths of the original investment.

It will be impossible to find any accurate statement of the total land values in the United States, but considering the fact that the enormous terminals are in the East rather than in the West, that the proportion of terminals to the railroad right of way is very much greater in the East than in the West, and when you consider not only the increase in land values but also the original cost, it would seem safe to estimate that the total land values in the United States, including the enormous terminals, is \$6,000,000,000, exclusive of improvements. It is probably safe to estimate that land values have increased 100 per cent in the last 15 years. If they increase 100 per cent in the next 20 years, the annual increase by reason of this unearned increment will amount to \$300,000,000. I also desire to call your attention to the fact that the writers of books against Government ownership of railroads do not discuss this item. Although this item is so important that it alone might be sufficient to decide this great question, still it is not mentioned by the advocates of private ownership. It deserves a thorough investigation by this committee.

I think, gentlemen, that the unearned-increment proposition, even if you do not go to Government ownership but decide to go ahead with Government regulation, is one that deserves serious consideration at your hands. I believe it should be ended. If we give

them and honest valuation and give them enough returns to collect 6 per cent in all years, that is sufficient, as they are not entitled to get a speculative value out of property of this kind. They are nothing more than public trustees—trustees for the public—for performing this service. We have surrendered this into their hands, and it is no more right that they should profit out of that trust than that a guardian or administrator of an estate should profit out of the advance of real estate which he controls.

The third great economic loss of private ownership of our railroads is the waste of competition. The details of this subject are myriad. I shall not attempt to present them. Those who favor uniting our railroads in a single giant private corporation rely upon the facts showing the great waste in the present system through duplication in everything. With these facts I agree. Nor is there a vast difference in the remedy I propose. I, too, believe in a single giant system, but I want all of the people of the United States for stockholders and the Interstate Commerce Commission for the board of directors. The Government of the United States is the only agency which our people will trust with so great power. But as to the waste of competition, I shall only give the conclusions of the most eminent authority, Mr. C. P. Huntington, president of the Southern Pacific Railway, who said that the local waste in New York City alone amounted to \$100,000,000 annually. (U. S. Ind. Com. IX, 985.) In reference to the waste of competition under the English system, Clement Edwards, page 28 *Railway Nationalization*, says:

What do the wastes of the present system, with its manifold ownership and divided management, amount to? Only an approximate figure can, of course, be given, in the present defective state of railway statistics. The secretary of the London & Northwestern Railway Co.—and he would not be likely to err on the side of exaggeration—estimated the loss as 20 per cent of working expense. A similar estimate has been made by Sir Edwin Chadwick, C. B., the eminent engineer. Another railway authority, Capt. Laws, manager of the Lancashire & Yorkshire, has placed the estimate at 24 per cent.

Mr. Edward Dudley Kenna, former vice president and general counsel of the Santa Fe, in his book on *Railway Misrule*, page 111, says:

English experts estimate that the wastes from competition are equal to 20 per cent of operating expenses. They are scarcely less in the United States. As the operating expenses of the railways for 1912 were \$1,958,963,000, the reasonable inference is that \$400,000,000 of this was waste, all of which the people were called upon to supply. This sum exceeds the total of all dividends disbursed during the year given by railway companies and is also greater than the annual disbursements for military, naval, and post-office expenditures by the Government.

Of course, Mr. Kenna's book was written a few years ago, before the great increase in military expenditures.

This is high authority, and it seems reliable. Government ownership would remove this waste and in this third great item would save to the people \$400,000,000 per year. Summarized, we have:

Annual saving because of superior Government credit.....	\$500, 000, 000
Annual saving of unearned increment of real estate.....	300, 000, 000
Annual saving of waste of competition.....	400, 000, 000

Total annual saving of Government ownership..... 1, 200, 000, 000

This is more than one-third of the gross revenues of all the railroads. Until recently it is more than the entire appropriations of the

Congress of the United States. And this does not include all of the waste and extravagance of private ownership. There are many smaller items, like legal expenses, advertising, and soliciting, which I will not attempt to estimate; however, there are two others so large that they ought not be omitted from consideration. The first is the waste through the alliances with subsidiary supply companies. This waste is nearly all concealed. I will only quote you what a distinguished United States Senator has said: "Enough is known to make it reasonably certain that hundreds of millions of railroad expenditures annually reported as necessarily paid out to maintain the railroad and meet its operating expenses are not honestly expenditures for such purposes, but represent instead wrongful payments to 'insiders' who work a legalized form of graft, taking a rake-off on everything that enters into railroad construction, from the money to finance it to the oil that lubricates the engines. The directors of the United States Steel Co. own and control more than one-half of the railroad mileage of the United States. They sell steel rails to themselves at 'most satisfactory figures.'"

I can illustrate this by a personal experience. Some years ago, in connection with the promotion of a little interurban railroad, I got the B. J. Arnold Co. to estimate on the price of furnishing steel rail, and the only price they quoted was \$28 per ton f. o. b. factory. The same year I had some business in Canada with the Canadian Pacific Railway Co., which was building an extension through some land that was owned by a company which I represented, and I went up there, and during the course of our business I made inquiries of the parties in charge of this extension about their steel prices, and they said they were quoted to them at \$20. That is the way the Steel Trust is doing business to-day.

In this connection, gentlemen, I have another exhibit which I desire to present to you, and I want to show you something about the power of this item in the history of the United States. In this same rate case, when we were examining their prices, etc., we made an investigation of the subject of steel rails as compared to the several items of steel. The exhibit which I have here, the top line running highest through that variation [exhibiting] is wire nails. There is a line in there—and I have marked it with pencil so you can find it easily—which indicates the steel rails.

Now, there are several other items of steel on that page, and they are going up and down, year after year, from 1898 to 1914, in compliance with the law of supply and demand, and perhaps there were manipulations, but you see the variations that happened all the way through on all the other steel products. The comparison of the percentages will show that if steel rails brought \$28 per ton, that wire nails brought about \$31 per ton, which is a remarkable thing, considering the difference in manufacture. Now, what happened to steel rails in 1901? In 1901 starts this black line [exhibiting] representing steel rails, and from 1901 it has proceeded as straight as the point of the compass. It never varied up or down until the end of 1914, and that is as far as this exhibit shows. Since the war began I understand it has varied up, but it is proceeding along in the same deadly parallel. Who was it that repealed the law of supply and demand? It has never been done before in the history of this big round world. Here is a private corporation or an association of private corpora-

tions that have exerted a power greater than the Roman Emperors or the Czar of all the Russias. The Congress of the United States can not draw another black line like that by law. You never can do it unless you take over these railroads and own both the railroads and control the manufacture of steel rails at the other end, as these men did. Owning a majority of these roads and selling these rails at the prices they desired, they were able to repeal the law of supply and demand and draw the blackest line—the only black line of its kind—in all human history.

By the way, I want you to see this exhibit, gentlemen. That was figured out by the same expert in the western advance rate case, and it was not controverted, and there is no doubt about its very great accuracy.

(The exhibit referred to is published in full; see p. 598.)

Then we have the alliances with subsidiary transportation companies. Our American railroads have failed to perform the very functions for which they were created. They have admitted their inefficiency and incompetence by farming out the express business, the telegraph business, the sleeping-car business, the tank-car business, and even a large part of the refrigerator and other freight business. These companies are all profitable. The receiver's court has no terrors for them. Even a Government parcels post has but slightly affected the express business. Under Government ownership nearly all of the net profits of these parasite companies would be saved to the people. The extravagance of Governments is proverbial, but the extravagance of private ownership of railroads has never yet been told.

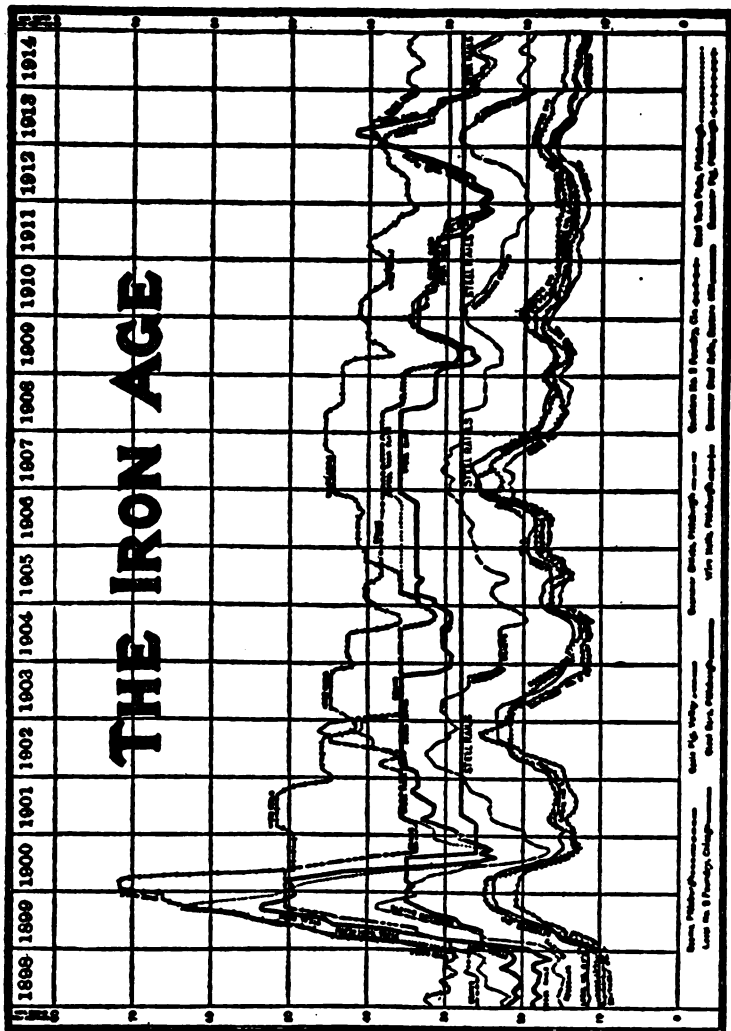
Having pointed out the economics of Government ownership, it is pertinent to inquire if there is anything on the other side of the account to offset them. It will be conceded that some things do so operate. According to Mr. Dunn, Government ownership of railways has been adopted in whole or in part in 53 different countries, and since his book was written the United States has started in Alaska. This gives a wide field for observation. A review of the change from private to public ownership in all of these countries will show that labor has received better treatment and better pay under Government ownership. This costs something, and would absorb a part of the savings I have indicated. Upon this subject Mr. Dunn says, on page 338:

As to the intensity of the labor required from and done by employees, it is likely to be greater under private than under public management. As has been shown elsewhere, when railroads have been transferred from private to public ownership, there is almost invariably an increase in the number of employees, and under similar conditions State railways ordinarily employ more men than private railways. This must mean that on the average the individual employee on the latter is required to do more work than on the former. Indeed, it is one of the common complaints against capitalistic employers that they work their employees harder than Governments.

Again, on page 441 he says:

However, it is significant that where there are State and private railways in the same country, it is found that the State railways pay a somewhat higher scale of wages, and seldom or never is it found that the opposite is the case.

These conclusions may be treated as the admissions of the best-informed opponents of Government ownership. They are true except as to the high-salaried general officers. In Germany the minis-



**Fluctuations in the Prices of Crude and Finished Iron and Steel from January 1, 1898, to January 1, 1915—Gross Tons**

ter of public works has charge of more railroads than any other one man on earth, and he manages them better, but his salary is only \$9,000 per year and house rent. Suppose, therefore, we admit that \$300,000,000 of the saving we have pointed out would go to increase the number of employees and to increase their pay. This would mean better labor conditions, greater safety, and better service for the public.

Who is there would regret if the \$20,000,000 now paid to general officers, largely as financial experts, legal experts, or political experts, were transferred to the section hands who do not draw a decent wage? Three hundred million dollars would be more than railroad labor has ever asked. This would leave \$900,000,000 still to be used in lowering rates, improving the service, or extending the facilities. We could have 1-cent passenger fare if we wanted it, or we could save an immense capital for new development. This is the other side of the account, and the balance remains large in favor of public ownership.

But now you ask for a concrete example. You say this is all theory, and you want to see the record of the country that has done these things. For this purpose I will make comparison to Germany. There are several reasons for this. The German roads are well managed. I do not favor Government ownership in this country unless the management is something like German efficiency. This does not mean an autocratic management. Contrary to popular belief, the German roads are under a very democratic management. The attached note is from Prof. Frank Parsons, and gives the workings in detail. A similar system is the most suitable for this country.

Now, gentlemen, I want to read to you a note about how the Prussian railroads are managed. They are really State roads in Germany. Prussia is the greatest State. Over and above the Prussian management there is a sort of supervising office that brushes down any distrust among the States. It does not exercise anything like the authority of our Interstate Commerce Commission as to private ownership. The real management, after all, is in the hands of the States over there, and this note that I read you now gives the management of the Prussian railways, and I think you will find it is both cooperative and democratic, exceedingly so, and as compared with the system which these railroads are proposing here now of abolishing practically all the State commissions and giving all the authority of all the management into the hands of the commission appointed by the President and Senate alone, the autocracy of the plan proposed here in the United States would be beyond expression, when you compare it with the so-called autocratic management in Germany. Now, let us see:

Railways are managed by the minister of public works at the top (with a national advisory council), 21 railway directorates, 6 classes of local officers (operating, machine, traffic, shop, telegraph, and building). One of the principal duties of the local traffic office is to maintain a "living union" between the railway administration and the public. The chiefs of these offices are required to get into intimate relations with the people of their localities. Each local traffic chief "by numerous personal interviews and observations must inform himself concerning the needs of the service in his district. Investigate and remedy complaints and evils without delay, and take such measures as will secure the most efficient service." It is also one of his duties to inform the public concerning the organization and administration of the railways. The management has nothing to hide from the public, but, on the contrary, desires the public to know exactly what is being done and why.

The local advisory councils are composed of representatives from chambers of commerce, labor organizations, farmers' unions, dairy associations, merchants' clubs, etc.; all sorts of industrial and social combinations are represented in these advisory councils, and the law requires the directories to consult these advisory bodies. The people organized according to their interests into various forms of industrial union (chambers of commerce, labor unions, farmers' associations, etc.) elect the members of the local advisory councils, and these councils in turn elect 30 out of the 40 members of the national advisory board, the other 10 members being appointed, 3 by the minister of agriculture and forests, 3 by the minister of trade and industry, 2 by the minister of finance, and 2 by the minister of public works, State officials being ineligible. These advisory bodies do actually discuss with the greatest force, clearness, and effectiveness all sorts of questions about rates and classification and the conduct of the railroads; they make their recommendations and suggestions, and they are almost always adopted—always, in fact, except in those rare cases where conditions beyond the control of the railway management prevent adoption from being reasonably possible. So that in Germany to-day the railway system is practically in the hands of the people to manage and direct. The roads are actually operated in the interests of the people on one of the most democratic and cooperative plans it would be possible to imagine.

Each railway directory must consult the circuit council on all important matters concerning the railways in its circuit. This applies especially to timetables and rate schedules. On the other hand, the council makes recommendations to the directory. In case of emergency the directory may act according to its own judgment independently of the council, but it is required to report all such cases to the standing committee of the council and to the council itself. This provision supplies the elastic element which enables the railway management to combine full efficiency and executive force with the council system. Each council has a standing committee which receives petitions, gathers and sifts evidence, and reports to the council.

If, for any reason, the circuit council and the local directory can not agree, or the question in hand is too large for local settlement, the matter goes up to the national council and the minister. The national council meets at least twice annually and deliberates on such matters as the proposed budget, normal freight and passenger rates, classification of freight, special and differential rates, proposed changes in regulation governing the operations of railways, and allied questions. The law requires it to submit its opinion on any question brought before it by the minister of public works, and it has the right to make any recommendations it sees fit in regard to any matter relating to the railways. Its proceedings are regularly submitted to the Landtag, where they are considered in connection with the budget, thus establishing "an organic connection" between the national council and the Parliament. In this way the proceedings are made accessible to everyone and an opportunity is given to approve or disapprove what the council does through parliamentary representatives. The system is one of reciprocal questioning and answering on the part of the minister of public works, the national council, and the Parliament.

For the purpose of this comparison, I will take my figures from Mr. Dunn's book. When they are unfair they are also unfavorable to Government ownership, so I use as my basis the concessions of the opposition. The mileage of the Prussian Hessian State Railways in 1910 was 23,325 and the cost per mile was \$114,000. (Dunn, p. 180.) The net earnings were \$170,000,000 (Dunn, 311), but from this should be deducted \$21,000,000 for taxes not collected. (Dunn, 313.) This would leave \$149,000,000 of profit to the Prussian Government in 1910, after paying all expenses and taxes as great as ours, and this vast sum was earned on 23,335 miles of line. The mileage for the United States was 238,609, or more than 10 times as great. At this ratio the American roads would have earned more than one and a half billion dollars, and deducting from this the entire interest charge would have left over 1,135 millions net. This is a wide margin over a billion dollars, and it shows that Germany actually did what I claim the United States ought to do.

What is the answer to this fatal achievement? In the main we hear two. First, it is loudly proclaimed that wages in the United States are double what they are in Germany, and, second, the American freight rates are the lowest in the world. The first is more than offset by the greater cost of railroads in Germany, and the second I challenge and will seek to disprove. In order to make the comparison I submit the following table. The German figures are from Mr. Dunn's book and the American from Statistics of Railways, I. C. C., 1910, which is the same year used by Mr. Dunn:

	Prussian Hessian State.	United States, private.
Mileage operated.....	23,335	239,609
Capitalization or cost of construction per mile of road.....	\$114,000	\$62,657
Passenger density, passengers carried 1 mile per mile of line.....	693,921	138,169
Average journey, miles.....	14.45	33
Average rate per passenger mile, cents.....	.88	1.938
Freight density (tons hauled 1 mile per mile of line).....	1,150,490	1,071,086
Average haul, miles.....		249.68
Total compensation American railway employees, 1910.....		\$1,143,725,308

Average wage (Dunn, 177), Prussian about one-half of American.

If the German wages are only one-half the American wages and all other conditions were equal, then it is certain American earnings would be less. A glance at the foregoing table shows other conditions are not equal. The first great discrepancy is in the cost of the road. We find that the German roads cost over \$51,000 per mile more than the capitalization of the American roads. If, therefore, the American roads cost as much there would be an additional \$12,000,000,000 upon which to earn a dividend. If we took half of the American wages shown in the table for that purpose they would yield about \$572,000,000, or about 4.77 per cent. But on page 311 Mr. Dunn shows the German roads earned 6.48 per cent upon their entire cost of \$114,000 per mile. Therefore the one item of greater cost of road more than offsets the difference in wages. In addition to this the German employees are so well protected by State insurance against injury and loss of employment with pensions that the real difference in wages is much less than the nominal difference.

No claim is more persistently made than that the American freight rates are the lowest in the world. You see it in newspapers, in magazines, in pamphlets, and in books. Mr. Dunn excepts Japan alone (p. 296). This claim has even reached Congress, and near the close of the last session Senator Works said: "The truth is that our freight rates are materially less than are the freight rates of any country in the world, and that passenger fares, with the exception of third and fourth class fares in European countries, are as low as are the rates in other parts of the world." Mr. Dunn has used seven pages of his book, 296-302, to demonstrate that our passenger rates are almost as low as the German and our freight rates much lower. I desire to join issue with those conclusions and assert that not only are American passenger rates highest in the world, but American freight rates for the same service are highest also. The issue is sharp and is also important. Now for the facts.

When we seek to compare freight rates in two different countries we first look for the average cost of hauling 1 ton of freight 1 mile. In the table given this average cost in Germany is 1.248 cents and

in the United States 0.753. If this were all to consider, the American rate is much lower than the German. But this is only the starting point. Every rate is made up of two things—one the terminal expense, the other the haulage expense. All freight must be loaded and unloaded, and facilities must be provided therefor. That is terminal expense. It must be moved. That is haulage. The terminal expense is about the same for a short haul as for a long one. Therefore the length of haul becomes the next great item in a freight rate. The above table gives the average German haul as 68 miles. That is Mr. Dunn's figures. Other eminent authority gives it as 60 miles; but again I use the conceded figures. In my table the American haul is given as 248.88 miles. In Mr. Dunn's book, on page 176, the "average haul miles," "railways of the United States," is given as only 138 miles. Now, we are coming to the issue. On page 296 he says the length of the American haul is double the German, and this statement is repeated on page 299. He makes no explanation of these figures, and states them as a positive fact and without qualification. Where did he get those figures? Look on page 59 of the statistics of railways.

I. C. C., 1910, and you will find them under the heading, "Typical haul of the average railway." Does that mean the average haul of the railways of the United States? It does not. It means the average haul of one; that is, the average railway. In the next column on the same page we find "The typical haul of all the railways regarded as a system," and that is 249.68 miles instead of 138. And there you find the two figures side by side, in the same book, and yet Mr. Dunn uses the typical haul of the average railway and never says a word about it, as the average American haul. In order to maintain that claim that American rates are lower at all, it is necessary to split that haul and reduce it down to 138 instead of 260 miles as it is to-day. It was 250 miles, in round numbers, at the time I made the comparison.

In our country there are many thousand hauls over two or three or even more roads. You can start a trainload of freight at New York over the New York Central, take it over the Lake Shore and over the Big Four, down to St. Louis without that train being broken up, every car going at the same time, under the same motive power, under the same crews. You can do all of that, and yet in Mr. Dunn's figures the typical haul of the American railway—that through haul is broken up and reported as three hauls, and there would be three terminal expenses. The unfairness of that proposition has enabled them to publish continually and put in statements and pamphlets and books and everything the fact that American freight rates are the lowest in the world. The cars are loaded at the beginning, switched from one road to another and not unloaded until the journey end. So far as terminal expenses is concerned this is one haul. Under the figures used by Mr. Dunn, if a car passed over three different roads that trip is broken up into three hauls, and he figures it as loaded three times and unloaded three times, when, in fact, it is only loaded once and unloaded once. He is not only wrong, but is grossly unfair in using these figures without explanation or comment.

If the Government owned the railroads, his figures would disappear from the table. There would be nothing from which to make them up. If private ownership is charging a terminal expense

which includes its share for loading and unloading every time it switches a car from one road to another, it is taking an extortionate toll that will be wiped out by Government ownership.

Why is this so important? When we find out the amount of terminal expense we shall see. I have made a careful investigation of this question and have had it figured out by an expert. Under the McGraham system established many years ago the railroads actually charge 6 cents per 100 pounds for terminal expense on sixth class, and they charge the same for the short haul as for the long one. Sixth class, the rate from New York to Chicago is 25 cents, and if you will read Prof. Ripley's book, which is favorable to the railroads, he describes how that rate was established 30 or more years ago and brought down to date—paying it to-day. It is divided 6 cents for terminal and 19 cents for haulage. Now, of course, for higher classes, both the haulage and the terminal are increased. For some of the commodities they are the same. The same division, also, is made on any commodity where the rate is 25 cents per hundred. On the commodities that are lower, both the haulage and the terminal is reduced in the charge.

Now, gentlemen, in order to make this terminal average for the United States safe, I have taken all of that reduction off the terminal and have not allowed any on the haulage at all. For the higher class rates they charge more and for the commodities less. The average terminal charge for all freight in the United States figures to be at least 4.25 cents per hundred pounds. That is what it figures out, allowing all this reduction, if there is any, on the terminal alone, taking nothing off of the haulage, leaving it as high as it is on the sixth class. On some local short hauls they charge less. In the Minnesota rate case the State commission fixed the charge for first class at 11.02 cents, and, as above stated, the average terminal charge for all freight in the United States figures out to be at least 4.25 cents per hundred pounds. This is the average terminal charge in the rates we now pay the railroads, and it is not modified by the fact that shippers load and unload carload lots. Therefore the average terminal charge alone on each ton of freight in our country is 85 cents. Now, gentlemen, I would like to have you remember those figures. The average terminal charge which we are now paying the railroads in the United States is 85 cents for each ton. In Germany, for terminal movement and all, it costs 1.248 cents to move each ton 1 mile. Therefore, to move a ton the average haul of 68 miles would cost only 84.9 cents.

In other words, the terminal expense alone in the United States is more than the whole German rate. If the length of haul is 68 miles in Germany and 250 in the United States, then the American is  $3\frac{1}{4}$  times the German instead of double, as claimed by Mr. Dunn. This means we must add  $2\frac{1}{4}$  terminal expenses to the American rate to make the comparison. When this is done the American rate becomes 1.886 as against 1.248 for the German. Instead of being the lowest in the world, our freight rates are more than 50 per cent higher than the German and there are no other facts to change this conclusion. We have already seen that our highest wages are more than offset by the greater cost of roads in Germany. The table shows the freight density to be about the same in the two countries. This

is a surprise to many, but some years it is even greater in our country. There are many other facts which tend to increase the American rates in the comparison. German rates include express, which is high and increases the average. Express is not included in the American rate. The American rate is cut down by large amounts of freight carried for the companies themselves, but the German rate includes only freight actually paid for. The proportion of bulky low-rate freight, like coal, iron, and timber, is very much greater in this country. Much of this goes by water in Germany. About one-third of our tonnage is coal, and that reduces the average rate. In Germany the proportion of manufactured goods is very much greater and they always go at a higher rate and increase the average. These considerations are fatal to the claim that the American rates are lower. About 1905 the German commissioners, Hoff and Schwabach, visited this country for the purpose of comparing freight rates. They reported that for the same service the American rate would be 1.44 cents per ton-mile as compared to the German rate of 0.95 of 1 cent. They also found the American rate to be almost 50 per cent higher. I have searched in vain for higher freight rates than the Americans' upon a fair comparison. England is the nearest approach, and England enjoyed the blessings of private control until the war wiped it out.

In Germany the average passenger fare is 0.88 of 1 cent per mile. About 3 per cent must be added to this for baggage charges and a little more for tickets through gates to parties seeing friends off on trains. After all is considered, the German rate is less than half the American rate of 1.938 cents per mile. The American accommodations are better than the German lower classes and the German density is more than five times the American. However, density does not count so much on passenger as on freight rates. In our country the passenger rate in the East is higher than in the less dense Middle West.

In the recent advances allowed by the commission they allowed  $2\frac{1}{2}$  cents for the eastern district here, but in the western district they only allowed 2.4 cents for interstate traffic, so the greater density is paying the higher rate here in the United States, and the railroads themselves figured it out in the same way prior to that.

The average journey in Germany is less than half the American, but neither is length of journey so important as length of haul in freight. When all is considered it is found that for the same service the American passenger rate is almost double the German and the freight rate more than 52 per cent higher, but still upon those low rates Government ownership in Germany had a net earning of \$170,000,000 in 1910 and the mails and parcel post were handled free.

A proper and fair analysis will reach the same conclusions in all the world. The United States is the best natural railroad proposition on earth. I used to feel we could not make a comparison. You might make a success in a little country like Switzerland, but you might fail in a big country like the United States, but the investigation of this subject proves conclusively that the larger the country the more sure you are to make a success. The railroad consolidations prove that. The attempt they are making now to get them united

under a single management proves the same thing. It is easier to make a success of Government ownership in the United States than in any country in this world. Germany is next. Superior management has put the German first. In other countries the results are not so great, because the propositions are not so good. The management in Switzerland under the most democratic form of government is in all respects as good as the German. The results are as great in proportion to the opportunities. In Australia the same is true, except the ownership has been by States instead of national. The same is true of Belgium, New Zealand, Japan, and South Africa.

Until very recently they have had a poor State management in Australia. Some States had narrow-gauge roads that went up against broad-gauge roads in other States. They have had an economic loss on them, but recently they have had national management, which will unite them all together, with the result that they will be as good as in any other country.

Even in Italy, where the proposition is so bad it is a failure under every management, still it is better under Government ownership. This is the only country that ever relapsed from Government ownership, but it soon came back. In all other countries the question is settled where the Government owns the railroads, and I believe there is no other settlement for it in our country.

Is Government ownership compatible with our system of government? The committee has asked that question, and I would reply to this by saying that private ownership has certainly proven incompatible to our system of government. If we go into the history of the manipulation, the looting, and the wrecking of American railroads, we find it without parallel in the history of the world. Legislatures, courts, and even Congress have been unable to stop these evils. They have continued right down to date in the New Haven and the Rock Island. Their participation in government has been evil, sinister, and universal. Count up the thousand newspapers on the pay roll of the New Haven, and who can ascribe to it any other motive than the corruption of public sentiment and the subversion of free government? Its schemes would have failed if government had not been chloroformed.

How much better is the recent campaign for higher rates through newspaper advertising. In Iowa more than 500 papers published this advertising, which was so false and unreliable that the attorney for the railroads was forced to repudiate it in the trial of the advance rate case. And all of this scheme of deceiving themselves was paid by the people in railroad fares. Why, at this moment, do the railroads have 350 political attorneys retained in the State of Iowa and other thousands throughout the United States? Why have the railroads offered my newspaper and every newspaper throughout the country free plate accounts of the hearings before this committee? It is because private ownership is not compatible with free government. The railroads will never get out of politics until the Government owns them. Then nobody will conduct a political campaign for higher rates. Nobody will corrupt a legislature for a charter to water the stocks. The political attorneys will all be discharged. The United States attorneys will protect the Government's interests. Congress can investigate every subject of transportation and no free plate matter will be sent out to edit or distort the facts.

On June 30, 1915, the United States Government was running more than 28,000 miles of railroad—more than the Prussian Empire. I think the number at the present time—I have seen it stated, at least, to be 42,000. The first was reported by the Interstate Commerce Commission at that time.

These great properties in control of our courts do not threaten our Government. They would be better still in the hands of the Interstate Commerce Commission, which knows so much more about them, but the courts run them better than these private owners who have wrecked them.

As to whether Government ownership will suit local needs, we only need to look at the Post Office Department. Its establishment of the rural free delivery is an answer full and complete. Every system of Government ownership does more to suit local needs than private ownership. It is one of the charges against Government ownership that it does too much and goes to extravagance.

I should favor the acquiring of the properties by the Government either by purchase or condemnation. The old stock issue should be retired and speculation forever cease in our public highways.

In conclusion, I will point out in my opinion why regulation is doomed to failure. A very large percentage—over two-thirds—of our railroads can live and prosper on a given set of rates. They are doing it now. It is unjust to the public to raise the whole rate structure in order to give the other one-third more revenue. It might be done in one giant corporation plan, but that looks too much like a private monarchy. The American people will not tolerate it very long. The other and only alternative is Government ownership.

I have here compiled a list of railway companies that earned more than 7 per cent on their common stock during the year 1913. This earning is net above all interest, all operating expenses and all taxes. I have accepted their capital stock as they themselves report it, water and all. These roads handled 70.09 per cent or more than two-thirds of all the traffic handled by the railroads for which the Interstate Commerce Commission publishes ton-mile figures. The commission did not publish traffic statistics for Class III railroads. However, these roads earn less than \$100,000 each annually and comprise less than 4 per cent of the mileage of the United States.

Gentlemen, here are the roads and what they earn, and I believe that nothing can be better than for us to read these figures over here and see what is happening to these individual roads. It shows to you that regulation can not regulate this competitive system. It is impossible for you gentlemen to figure out a plan to give all of the railroads of the United States 6 per cent and just enough surplus to make that absolutely sure each year. You can not do it under this private ownership because of this great discrepancy and the great differences in the organization, the localities, and the numerous systems.

The Baltimore & Ohio earned 7.33 on all its common stock. The Bessemer & Lake Erie Railroad Co. earned on all its stock, preferred and all—I did not get some of these separated; I had to take it all—it earned 18.14 per cent. The Buffalo, Rochester & Pittsburgh Railway Co., on all its stock, earned 12.89 per cent. The Central New England Railway Co. earned 8.45 per cent on 259,497,608 ton-miles.

The Central Railroad Co. of New Jersey earned 24.93 per cent on 2,484,070,485. The Delaware & Hudson Railroad System earned 14.19 per cent on 3,060,971,982. The Delaware, Lackawanna & Western Railroad Co. earned 22.93 per cent on 4,277,030,439. The Kana-wha & Michigan Railway Co. earned 11.17 per cent on 712,246,180. The Lehigh & Hudson River Railway Co. earned 20.01 per cent on 231,727,702. The Lehigh Valley Railroad Co. earned 14.10 per cent on 5,812,384,917. The New York Central lines earned 11.08 per cent on 34,424,312,942. The Norfolk & Western Railway Co. earned 9.02 on 8,856,070,381. The Pennsylvania System earned 9.64 on 42,874,515,240, whole line. The Reading System earned 13.10 per cent on 6,134,611,747.

On all the stock of the Baltimore & Ohio it would be more if the dividends were paid on the preferred than all applied to the common stock.

The CHAIRMAN. What year were those figures for?

Mr. BROOKHART. This was 1913. I took them from the Advance Rate case because we have worked them out in that case. The figures for 1916 would be considerably more. In 1914 and 1915 they would be less. This probably would be about an average of the four years. The earnings are on common stock on these.

The Detroit & Mackinac earned 9.71 per cent on 96,239,146 ton-miles. The Detroit & Toledo Shore Line earned 19.20 per cent on 4,346,397. The Elgin, Joliet & Eastern Railway Co. earned 25.03 per cent on 1,755,724,208. The Lehigh & New England earned 8.64 per cent on 157,791,718. The Alabama & Vicksburg Railway Co. earned 17.50 per cent on 127,280,286. The Cincinnati, New Orleans & Texas Pacific Railway Co. earned 71.23 on 1,072,034,160.

You will notice they had over a billion ton-miles.

The Atlantic Coast Line Railroad Co. earned 11.50 per cent on 2,036,643,060 ton-miles. The Atlantic & West Point Railroad Co. earned 10.14 per cent on 44,118,559 ton-miles. The Louisville & Nashville Railroad Co. earned 11.99 per cent on 5,513,273,784 ton-miles.

I take it that is the one which bought up the road you sought to have built through your county. Mr. Sims. It earns almost 12 per cent, and it bought up that road in some manner, dumped it in the wastebasket to control the situation better and earn more perhaps.

Name of road.	Per cent earned on common stock.	Ton-miles.
Nashville, Chattanooga & St. Louis Ry.....	15.53	933,652,813
Richmond, Fredericksburgh & Potomac R. R.....	24.34	167,521,317
Western Ry. of Alabama.....	9.85	61,098,853
Charleston & Western Carolina Ry. Co.....	14.82	131,375,050
Alabama Great Southern.....	11.90	538,501,738
Mobile & Ohio.....	10.68	1,555,296,849
Virginia & Southwestern Ry.....	15.74	186,781,321
Arizona & New Mexico.....	15.42	35,817,134
Atchison, Topeka & Santa Fe.....	8.61	7,802,544,667
Bingham & Garfield.....	22.43	71,195,585
Minneapolis, St. Paul & Sault Ste. Marie.....	18.35	3,332,849,906
Chicago & Northwestern.....	10.06	6,282,916,222

Those two last are large roads, one 3,000,000,000, and the other 6,000,000,000 ton-miles.

Name of road.	Per cent earned on common stock.	Ton-miles.
Chicago, St. Paul, Minneapolis & Omaha.....	8.03	1,262,998,028
Chicago, Milwaukee & St. Paul.....	10.21	8,570,061,411
Florence & Cripple Creek R. R.....	18.36	27,208,344
Duluth & Iron Range.....	100.44	857,841,405

That road has more than three-fourths billion ton-miles.

Mr. ADAMSON. Those roads to which you have just alluded having such large earnings are the iron roads, are they not?

Mr. BROOKHART. I think some of them are.

Mr. ADAMSON. The ore roads?

Mr. BROOKHART. Yes; and coal roads, some of them.

Name of road.	Per cent earned on common stock.	Ton-miles.
Duluth, Mesaba & Northern.....	90.49	1,070,850,116
El Paso & Southwestern.....	9.02	750,740,290
Great Northern.....	11.00	7,634,066,449
International & Great Northern.....	10.80	695,410,511
Nevada Northern.....	35.36	104,507,372
Northern Pacific.....	8.80	6,232,168,637
Chicago, Burlington & Quincy.....	19.00	8,791,435,597
Fort Worth & Denver City.....	7.52	378,842,083
San Antonio & Aransas Pass.....	20.12	210,434,227
Union Pacific System.....	14.41	6,283,029,209
Southern Pacific System.....	9.62	7,034,174,870
Cambria & Indiana R. R. Co.....	11.90	10,092,236
Cornwall R. R. Co.....	13.30	4,219,116
Coudersport & Port Allegheny.....	8.80	4,542,302
Cumberland & Pennsylvania R. R. Co.....	24.57	44,811,099
East Broad Top Railroad & Coal Co.....	26.84	15,321,013
Tennessee & Wyoming R. R. Co.....	7.77	4,429,973
Hoosier Tunnel & Wilmington R. R. Co.....	7.58	1,094,522
Lake Champlain & Moriah R. R. Co.....	16.44	5,414,199
Lakeside & Marblehead R. R. Co.....	37.51	15,340,439
Ligonier Valley R. R. Co.....	17.81	13,062,220

The CHAIRMAN. Have you on that list all the large railway systems?

Mr. BROOKHART. Yes; they are all in here except the few I will mention later, Senator. There are some of the roads badly financed I will mention later by themselves.

Mr. HAMILTON. You have not given the average of all the roads, have you?

Mr. BROOKHART. No, sir; it is a big job. You can get the capitalization of all of them and add them up, and add these per cent, and in that way figure them out, but it is a bigger job than I had time, just as a common, ordinary citizen, to do.

I will not read the balance of them.

The CHAIRMAN. They will be included in the record.

Mr. BROOKHART. I have read a good deal because I wanted you to feel that most of the railroads of the United States are earning more than they ought to earn now. The rates are too high. I call your special attention to the Brimstone Railroad & Canal Co., which earns 209.80 per cent. The Brimstone route is earning the most of any railroad in the United States.

The Hocking Valley, which omitted earlier, is one of these large roads; it earned 17.43 per cent on its total stock.

These roads were taken out of 96 per cent of the roads that are reported, and they carry over 70 per cent of all the traffic in the United States. The authority for it all is the Interstate Commerce Commission. I will read that. It is in the record here.

The balance of the list is as follows:

Name of road.	Per cent earned on common stock.	Ton-miles.
Potato Creek R. R. Co.	48.32	3,777,341
Raritan River R. R. Co.	13.34	4,231,869
St. Louis & O'Fallon Ry. Co.	88.97	11,677,412
Pionesta Valley Ry. Co.	12.51	3,741,787
Durham & Southern Ry. Co.	11.98	6,885,804
East Tennessee & Western North Carolina	18.74	6,268,074
Frankfort & Cincinnati Ry. Co.	9.19	1,544,577
Kentucky & Tennessee Ry.	121.02	3,432,727
Kentwood & Eastern Ry. Co.	43.46	7,524,119
Abilene & Southern Ry. Co.	36.52	2,359,811
Brimstone Railroad & Canal Co.	209.80	888,049
Castle Valley R. R. Co.	33.24	6,320,094
Colorado & Southeastern R. R.	18.80	10,300,629
Colorado & Wyoming Ry. Co.	171.86	19,815,728
Duluth & Northern Minnesota Ry.	17.54	40,983,759
Mississippi River & Bonne Terre Ry.	7.36	26,902,257
Missouri & Louisiana R. R. Co.	23.88	7,823,233
Missouri & Southern R. R. Co.	17.07	3,933,422
Minnesota & International Ry.	24.42	68,877,376
Columbia & Puget Sound R. R.	204.58	24,207,928
Ray & Gila Valley R. R. Co.	27.04	13,819,327
San Antonio, Uvalde & Gulf R. R.	23.32	6,341,080
San Joaquin & Eastern Ry.	34.77	3,433,877
Sibley, Lake Bisteneau & Southern Ry.	27.58	2,443,809
Houston & Shreveport	32.00	13,516,151
Sunset Ry. Co.	7.78	50,928,121
Sugar Land Ry. Co.	12.57	1,478,221
Tonopah & Goldfield R. R. Co.	14.14	9,625,423
Warren & Quachita Valley Ry.	8.01	1,463,542
Washington, Idaho & Montana Ry.	17.41	22,714,229
Hocking Valley	17.43	1,453,682,875
Total ton-miles.....		211,261,777,994

Total ton-miles of Class I and II railroads—or those whose annual operating revenue exceeds \$100,000—in the United States for year ending June 30, 1913, 301,398,753,108.

Per cent of traffic handled of those roads that earned 7 per cent on their common stock, 70.09.

Authorities: Railroad exhibits showing figures for systems in Five Per Cent Case were used in order to eliminate the intercorporate relationship of capital stock; reports to stockholders for Atchison, Topeka & Santa Fe, Union Pacific, and Southern Pacific, giving system figures, were used; and the balance of Class I and II roads as reported by the Interstate Commerce Commission in their Reports of Statistics of Railways in the United States for the year 1913.

96.43 per cent of the total mileage of railway companies reporting to the Interstate Commerce Commission is embraced in Class I and II roads.

Return is on capital stock. Figures taken from railroad exhibits in Five Per Cent Case did not show the common and preferred stock separately, however, the return on common stock would be much greater in instances where there is more than one kind of stock.

Take out of the remaining 30 per cent the Chicago & Alton, the Frisco, and the Rock Island, about which Commissioner Daniels spoke as having been wrecked by financial manipulation, in his opinion, in the Western Advance Rate Case, also the Erie (whose financial history is notorious, and if its capital stock averaged the same per mile of line as the average of the eastern district, it would have earned 7.56 on such capital, and if its funded debt had averaged the same as the average of the eastern district per mile, it would have earned 14.60 per cent); also take out the Chesapeake &

Ohio, the West Side Belt, the Illinois Central, and the St. Louis, Iron Mountain & Southern, which earned over 5 per cent, and the remaining roads of the United States only handled 18 per cent of the traffic.

This analysis shows the railroads handling 82 per cent of our traffic are earning enough on an average. If you will take the foregoing "wildcat" roads and reform their capitalization to even the general railroad standard and also take the 5 per cent roads which I have mentioned and put them in with those I have specifically shown to have earned over 7 per cent, you will probably find that the whole 82 per cent earned an average of over 9 per cent on all their common stock, water and all.

The representative of the railroads has stated in this hearing that 6 per cent for dividends and 3 per cent for surplus is an adequate return to insure good credit and command the capital necessary for future needs and developments. Let us concede that the roads handling the other 18 per cent of traffic should have high rates, and then let us reduce the rates on the Central of New Jersey, the New York Central Lines, the Pennsylvania System, the Atlantic Coast Line, the Louisville & Nashville, the Great Northern, the Burlington, the Northwestern, the Union Pacific, the Southern Pacific and on the other roads that earn more than 9 per cent, and what will private ownership say? It will throw up its hands in horror and tell you the whole rate structure must be raised in order to relieve the situation. In other words, the already excessive and even extortionate rates of many strong lines must be further increased, in order that a few weak lines may live and the whole credit fabric become dependable. A more unjust and unreasonable proposition was never presented to the American Congress. It is impossible for regulation to equalize the rates and earnings of our railroads under their unscientific and competitive system of private ownership.

Regulation must also fail because of the constant conflict between the interests of private ownership and the regulating authority. The claim that the railroads have ceased to resist regulation in the courts or anywhere else is a myth. In 1907 they fought the enactment by Congress of the law giving the Interstate Commerce Commission power to regulate rates. They fought the 2-cent fare laws and all the other regulating measures before most of the State legislatures. Failing, they took them into the courts and never stopped the fight until they won or lost in the courts of last resort.

The ink of the President's signature had not dried on the Adamson bill when President Ripley, of the Santa Fe, announced that he would not submit to the law until commanded by the Supreme Court of the United States; and the other railroad executives have joined him since. And the railroads are now before this committee fighting every State commission in the whole Republic. They are demanding that you abolish these commissions by taking away all their authority over the railroads. They are inviting a lawsuit upon every act of every State commission in regulation of the railroads, regardless of the constitutional rights of the States. If the Adamson law is held void, and if the railroad men strike, they have brought us to the threshold of revolution. This conflict must cease. The answer is Government ownership. Former Gov. Larrabee, of Iowa, now deceased, was a pioneer in the field of railroad regulation. In his

private library, in a book entitled "Transportation in Europe," by Logan G. McPherson, on the margin of page 207, in his own handwriting, Gov. Larrabee wrote:

Private management strives for the most money for the least service, while Government management strives for the best service for the least money possible. The Government will eventually take over the railroads. People will not tolerate private management.

In conclusion, I believe that if the Supreme Court should hold, as the lower court has held, as to the constitutionality of the Adamson bill this session of Congress will take over the railroads.

Mr. ADAMSON. You are mistaken about the lower court holding that. He just said according to what he had heard them say about it.

Mr. BROOKHART. I accept your correction, Mr. Adamson.

Mr. ADAMSON. That was a consent order, by agreement, in order that they could correct it.

Mr. BROOKHART. He put it in the record.

Mr. ADAMSON. If the Supreme Court should hold the Adamson law unconstitutional, it would have to repeal the commerce clause, and I am willing to do that in order to get rid of the commerce clause.

Mr. BROOKHART. I agree with you on your eight-hour law. I believe it is right and just; but if it should go the other way, what will you do? I believe if that should happen the question of taking over the railroads, and taking them over immediately, will be all that we can reasonably consider. That is the only way you can save us from the greatest trouble and revolution since the Civil War. But supposing that does not happen, and supposing things go smoothly and that you are going to give these railroads another chance. They are before you confessing and claiming that they are inefficient as to credit, and that they have failed. I am not agreeing with them on that; I am giving them a better credit than they give themselves. They are telling you that the system of regulation which you have provided is a failure, and they are asking you to invade the States and take away the regualtive powers of the States and to give them another chance. After 80 years of experiments they want one more opportunity for experiment.

If you decide to do that, let me ask you to consider the proposition of a referendum to the people of the United States on this question. Let us take the voice of the people; let us give them the facts and see what they say. Up to date, gentlemen, we have not been able to get the people to consider these facts. Books are sent to me like this one all the time, because I happen to publish a little newspaper out in my home town. They are articles by college professors, and they all have the railroad bias, which Mr. Bryan has so aptly described; they leave out the things that would clarify the people's understanding of the situation; but they persistently claim that American freight rates are so much lower and American wages are so much higher that the railroads are at a disadvantage.

They never tell the people that a right of way abroad costs more than the whole road equipped in the United States, and that that difference more than offsets the difference in wages. They never figure out that the terminal expenses in the United States are more than the whole freight rate of any other country in the world, and by that cort of campaign they mislead the people, and they have

made those arguments in hearings before the Interstate Commerce Commission; every paper in Iowa that came to my exchange table published their paid advertisements before the trial of the rate case—this last advance rate case—and when we went into the trial and brought out the facts, where they claimed that they did not have money sufficient for maintenance, although the maintenance had been increased once \$120,000,000 a year, and again \$109,000,000 in a year, and that level always maintained forever afterwards, and although the fact is that they are building up their roads both as to equipment and as to roadbed out of surplus and out of earnings all the time, and they are using it out of earnings and charging it to earnings, and the people are paying it, and they are getting it—although all of those facts and those things were happening, this campaign went on all over our State and all over the West to create a public sentiment in deciding a question of fact which was a judicial question, to surround the commission with that sort of influence, and when we brought them to book, their attorney, Mr. Wright, of the North Western Railway, was forced to repudiate the claims of the advertisers and to concede that the maintenance of the western roads had been as good as they themselves thought it should be. Under those conditions and in the light of those facts there is a great opportunity for economy to be effected by Government credit, because every man must admit that there will be the saving of the unearned increment on real estate, which is now enormous, and every well-informed man will admit that the saving of the waste in competition will be enormous, those items amounting to more than a billion dollars a year, and those are the economic savings with which you can start to better your facilities, to better labor's condition, and to reduce rates, to better serve the American people; and if the Government of the United States is so inefficient and so incompetent that with an economic basis like that it can not start and do for the people of the United States by managing the people's public highways better than private ownership is doing now, this Government ought to cease to exist. I thank you, gentlemen.

The CHAIRMAN. The committee will now adjourn.

(Thereupon, at 6 o'clock and 5 minutes p. m., the joint committee adjourned subject to the call of the chairman.)

#### STATEMENT OF A. P. RAMSTEDT, OF THE IDAHO PUBLIC UTILITIES COMMISSION.

GENTLEMEN: I had hoped to be able to appear in person before your committee to express my views on the subject of railway regulation and control, but it now seems that I will be unable to go to Washington, and for that reason I take the opportunity offered by the committee to briefly express my views on the subject in this written communication.

In discussing the question of regulating common carriers, I have in mind the provisions of the Federal Constitution, vesting in Congress the power to regulate commerce among the several States, and the spirit and intent of the Constitution that no preference shall be given one State over any other State by any regulation of commerce. I believe that it was to secure the freedom of interstate commerce

from State control whenever the general welfare should demand it that the grant in the Constitution was made under which Congress may provide effective regulation and exclusive Federal control.

Referring to the power of Congress to regulate interstate commerce, Mr. Justice Hughes in the Minnesota rate cases said "the conviction of its necessity sprang from the disastrous experiences under the Confederation when the States vied in discriminatory measures against each other."

We are to-day confronted with the possibility of one State, in the absence of any interference on the part of the Federal Government, to so regulate purely State rates as to build up shipping centers within its borders at the expense of shipping centers in other States. State regulation is always subject to the influence of State jealousy, resulting in discrimination against the people of other States. This discrimination, as I view it, is contrary to the very spirit of the Federal Constitution.

After making these general statements, I shall as far as practicable classify my remarks according to the suggestions of your committee.

Referring to the first subject to which our attention is called, would say that the jurisdiction of the Commerce Commission should, I believe, be extended rather than restricted. I believe that the commission's jurisdiction should be extended to also include restriction of competition wherever competition is not clearly in the interest of the public. I am convinced from my experience in the regulation of other public utilities under a plan favoring regulated monopoly that such regulation would be in the interest of all the people. Under such plan the commission should have authority to prescribe fixed rates—not maximum rates, as at present. The commission should also have power to prescribe the joint use of facilities whenever economy or the public convenience and necessity so require.

The commission should also exercise authority to permit the consolidation of short-line roads into long through systems, assuring the patrons of the carriers quick and regular deliveries and opening up to producers free competition throughout the whole country in the interest of the consumers—the whole thing supporting the concentration for cheap production and the elimination of waste in an extended competitive field.

I believe that it is now generally admitted that competition, in so far as public utilities are concerned, is undesirable when the State has, as to the rates charged and the service rendered, undertaken to control and regulate such utilities. At least the people of my State admit the soundness of that idea and are committed to that general principle.

This country, especially that part of the country wherein I live, needs more railroad facilities. These facilities can not be had without added investment to railroad enterprises, and as far as I can see the investment will not be made unless there is some assurance that a reasonable return will be allowed on the investment and that the money invested will be honestly expended. It follows therefore that the commission should also exercise jurisdiction over the issue of securities and perhaps the incorporation of railroads. I will defer

discussing the questions of Federal incorporation and supervision over the issue of securities until later in order to maintain the sequence outlined by your committee.

Referring now to the next two subheads having to do with the organization of the commission, I will say that I have no detailed plan to offer. Viewing the matter in the interest of the country as a whole, the organization should be such as will tend toward uniform and general transportation, regulation, and development, because oftentimes the interests and ideas of the several States, as well as different sections of the country, are conflicting on account of purely local conditions. I am therefore in favor of a larger and stronger Federal commission, acting as a central body in Washington and through several subcommissions exercising administrative jurisdiction over areas determined by traffic conditions. The supervision should not only be centralized and of the highest class possible, but should be capable of being brought close to the public, affording a means of taking care of troubles that are more or less local in character.

The next subhead refers to railroad credit, the supervision of securities issues, and the effect of concurrent jurisdiction of the Nation and the States to control such issues; also the field of operations for State commissions under exclusive Federal control.

In earlier years when a larger portion of the country was undeveloped and transportation lines comparatively few, the people were liberal and granted the transportation lines a latitude under which the lines were extended into undeveloped territory, resulting in a remarkable development in railroad transportation. In later years the old-time liberality of the people disappeared to a degree which is probably justified by the development of railroad transportation, and we have now reached a stage where the absolute rights of the carriers and the public should be determined according to fixed economic principles.

A number of States assert a right to control stock and bond issues of railroads within their respective territories. Such control on the part of the several States through which a transcontinental line runs would, of course, impair railroad credit.

Some States have insisted that part of the proceeds of contemplated new financing be expended within their respective boundaries as a condition to obtaining their consent. I believe that the imposition of such conditions by one State creates a discrimination against the rights and commerce of other States.

I believe that improvements of existing railroads and construction of new lines has under the present system been seriously retarded. In order to secure the capital necessary to bring about needed improvements and new construction it appears that a market must be found for railroad securities, and the public must be assured that the capital invested will be used for legitimate purposes and not for speculation.

In order that railroad securities may find a market in the world's exchanges and the people may know that the capitalization is honest there should be some supervision over the issue of railroad securities and possibly incorporation, in addition to such supervision over rates as will give reasonable assurance that the earnings will be sufficient

to meet interest accounts as well as operating expenses. This supervision should, on account of its very nature, be Federal and, as stated before, centralized and of the highest class. To allow a State to supervise or regulate the securities of an interstate carrier appears to me to be unreasonable. The Federal Government alone should exercise such authority.

Under the protection of the Federal Constitution, as I understand it, railroads are allowed to charge rates that will produce a reasonable return upon the capital invested. The determination of a reasonable return, as well as the capital to be invested, must, if successfully determined, be determined by one authority. It seems to me that in justice to all concerned you can not leave the determination of these questions to several authorities, each acting separately and without coordination.

If exclusive Federal control is adopted there still remains a large field of operations for the several State commissions. The regulation of public utilities other than railroads will keep them all occupied.

The next subhead refers to the effect of dual rate regulations—State and Nation—and with reference to that matter would say that the attempt of the several States, each acting independently, to regulate our railroads has, in my judgment, resulted in waste, confusion, and discrimination, which can be eliminated only by the institution of a single rate-regulating authority. If we are ever to fully enjoy the blessings that flow from efficient railroad regulation, the very nature of the thing to be regulated requires that the regulation be vested exclusively in the Federal Government.

I have referred to the possibility, under multiple control, of one State building up shipping centers at the expense of shipping centers in other States. Centers built up by regulation only can not hope to enjoy prosperity permanently. Sooner or later the fictitious values created at the expense of other centers naturally more favorably situated will fall, and we then realize the extent of the economic waste that has been going on in attempting to create an abnormal situation by rate regulation.

An intrastate rate of an interstate carrier will have its influence upon interstate traffic which is by far the greater part—probably three-fourths or more of all traffic—and the efficient regulation of interstate traffic by Federal authority in the interest of the majority of the people will require the regulation of intrastate traffic by the same authority.

Interstate carriers are engaged in intrastate as well as interstate commerce. The assurance that a reasonable return be allowed on the investment can not be had without proper and exclusive Federal control. The return can not be determined without regard to revenue and expenses. The revenue is made up of the earnings from all sources—intrastate as well as interstate—and the expenses are incurred in the transactions of intrastate as well as interstate business. It is almost impossible to segregate the revenue and expenses of carriers between intrastate and interstate traffic. Even though such segregation could be made, control of State rates must be had under any scientific plan of regulation in order to justly distribute the expense of operation in fixing rates. Furthermore, under multiple

regulation we are confronted with the conflict between States as regards demurrage penalties, Sunday and holiday restrictions, and other matters.

I believe it can be stated conclusively that rates are essentially interstate in their operation (Shreveport and other cases) and that the transportation question is a national problem.

It has been said that Federal regulation at present means higher rates. This statement is undoubtedly based on the fact that the Commerce Commission has consistently supported the higher interstate rate as compared with State made rates. The tendency of State regulation is to reduce rates on account of the opportunity afforded to take advantage as between States. As a result there is a tendency to reduce certain interstate rates on account of the influence of the intrastate rate on the interstate rates. The failure or rather inability of the Commerce Commission to prescribe minimum rates permits certain interstate rates to become unreasonably low, and as a result other interstate rates are increased in attempting to overcome loss resulting from the low rates. I believe that if the Commerce Commission could in all cases fix the rate, i. e., increase as well as decrease the rate, a great many interstate rates could be reduced as a result of increasing other rates which are now too low. This adjustment of rates could not be made without central control of all rates on account of the influence of the intrastate rate upon interstate rates.

Referring now to the next subhead, I would say that some provision should be had for the adjustment of disputes between carriers and their employees in order to maintain uninterrupted commerce between States. We can now all realize how a disruption of all railroad service, and the infliction of loss and suffering upon the entire country, might result from a mere disagreement between carriers and their employees.

The employee and the employer engaged in interstate commerce have certain duties of a public nature to perform and each should be held responsible in the performance of such duties.

The next and last subhead refers to national incorporation and uniform rules of taxation.

As stated before, I am in favor of the consolidation of railroads into through systems and the regulation of transportation systems as natural monopolies. Any scheme favoring such consolidation and regulation should include Federal incorporation. As it is now, many of the individual companies that go to make up a great railway system have special charter rights or restrictions which do not permit of or encourage the development of the territory served by the entire system to the extent of the development that might be had under a scheme permitting consolidation under a Federal charter.

With reference to the taxation of railroad properties will say that I am convinced that it would be for the good of all if a uniform system of taxing railroads could be established, and I am therefore in favor of the National Government prescribing a rule under which the total amount of taxes paid may as far as possible be fairly distributed among the several States entitled to share in the distribution of such taxes. It may be that, under all circumstances, the nearest

approach to an equable distribution of such taxes among States might be had under a rule similar to that prescribed for taxing National banks.

**BRIEF FILED BY S. H. COWAN, OF FORT WORTH, TEX.**

**To the JOINT COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.  
Mr. CHAIRMAN AND GENTLEMEN:**

**I. PRELIMINARY.**

At the convening of this committee in Washington on November 20, 1916, at which time those who expected to make statements or present arguments to this committee touching the matters under investigation, as shown by Senate joint resolution No. 60, approved July 20, 1916, pertaining to all matters of transportation, etc., were called upon to enter their appearance and state the subjects upon which they expected to be heard, the time at which they desired to be heard, the parties who desired to be heard, and what interests they would represent, we appeared, as shown by the printed report of the proceedings, representing the National Live Stock Shippers' Protective League, the American National Live Stock Association, and constituent members of these associations, which comprised practically all of the organizations of live-stock shippers and those engaged in the business of raising, feeding, fattening, buying, slaughtering, and selling of live stock throughout the West and Central West, ranches, farms, and in the business of the great markets of the country.

It was then stated that these organizations desired to appear, probably through the various parties whose names were then given, together with other representation that might suit the convenience of the committee, mainly in opposition to the proposal which they understood to be before the committee to adopt a system of Federal control of rates and transportation, and matters pertaining thereto, with the view to taking away from State commissions the exercise of their functions in that behalf; also that we desired to appear to present some matters regarding affirmative legislation to facilitate and hasten cases before the Interstate Commerce Commission. It was stated that some of these parties would be able to appear from about the 4th to the 8th of December should it suit the convenience of the committee, and at such later dates as might be found desirable, it being desired first to hear the proposition submitted by the proponents of this revolutionary legislation to change the regulation of rates and transportation.

We understand that it was arranged that the representatives of the railroads should present their views; also representatives of certain other organizations, certain publicists and economists and others, and that thereafter the shippers would be heard from.

Since it has now been determined that the committee will adjourn until after the short session of Congress, those represented, and who present this brief, desire to submit a general outline and some specific matters to this committee for its consideration in the meantime, and to reply to some of the propositions which have been heretofore submitted to this committee for its consideration by the representatives

of the carriers. Accordingly the request was made that we be permitted to file this brief of argument, as it may be termed, to go in and be printed as a part of the proceedings of this committee, and arrangements to that effect were made with the chairman and vice chairman of this committee.

As we understand it, leave has been granted to that effect and we therefore submit the following for your consideration:

We are opposed to Federal control of State rates, directly or indirectly, or the taking away of the control of intrastate rates and regulations by the States, and in favor of State right of control of State commerce. We are also opposed to Federal incorporation of railroads for the purpose of Federal control of State rates, regulations, and control of railroads as to State business; and we are further opposed to the interference with the constitutional right of the States to regulate railroads, and to Government ownership until and unless it shall finally appear to be absolutely necessary in the public interest. The question as to whether Government ownership is absolutely in the public interest has not been considered by our organizations.

Mainly, we devote ourselves to the subject of Federal control of State rates, and to some amendments of the act to enable the Interstate Commerce Commission to efficiently perform its duty and for relief of the public.

## II. SHIPPERS' RESOLUTIONS.

We submit herewith a resolution adopted by the executive committee of the American National Live Stock Association, at Denver, on September 16, 1916, as follows:

### STATE REGULATION OF RAILROAD RATES AND CHARGES—SHREVEPORT DECISION.

[A resolution adopted by the executive committee of the American National Live Stock Association, at Denver, Colo., Sept. 16, 1916.]

Whereas a serious conflict of jurisdiction has arisen between the Interstate Commerce Commission and the railroad commissions of the different States, by reason of certain decisions of the Interstate Commerce Commission affecting the rates, rules, and regulations governing intrastate traffic; and

Whereas in a recent decision in the Shreveport case the Interstate Commerce Commission, on the ground of discrimination and prejudice against Shreveport, prescribed a scale of rates on live stock between Texas points and Shreveport on a different and higher basis than fixed by the railroad commission of Texas and by its order, effective November 1, 1916, requires the railroads to cease and desist from charging and collecting a lower rate for the transportation of live stock wholly within the State of Texas than the said scale to be applied to Shreveport; and, as said decision is construed by Texas railroads, the jurisdiction of the Railroad Commission of Texas over State rates is thus superseded by the Interstate Commerce Commission; and

Whereas this is the first instance in which the Interstate Commerce Commission has proposed to regulate intrastate rates on live stock, and its decision in this case is based upon what we believe to be a misapprehension of the extent and character of the alleged discrimination and prejudice against Shreveport; for we contend that the small volume of traffic involved, and the consequent negligible amount of difference in the rates, makes it extremely improbable that any interests at Shreveport could be unduly and unreasonably prejudiced by the existence of a lower scale of rates for intrastate live-stock traffic within the State of Texas; and

Whereas, the present rates on live stock prescribed by the railroad commission of Texas are, with minor exceptions, the same as the rates originally fixed by the railroads, both as to beef and stock cattle, and have been in effect for approximately 25 years and have applied regardless of whether the cattle

move to markets within the State or between pastures or to feed lots; and said rates have been carefully investigated at divers times by the railroad commission of Texas and declared to be reasonable and just; and

Whereas we believe the conditions of raising, shipping, and maturing cattle within the State of Texas, and the necessities of the business, are best known to the people of Texas, and the transportation requirements can be more judiciously regulated through the constituted State authority, as in the past; and

Whereas the jurisdiction of the Interstate Commerce Commission to regulate such live-stock rates within the State of Texas is dependent wholly upon an alleged unjust discrimination and undue prejudice against Shreveport, and it is our firm conviction that, while an apparent discrimination may seemingly exist by reason of a difference in the present rates, it is not such a real discrimination or undue prejudice, as required by the law, as to warrant the Interstate Commerce Commission to assume jurisdiction over the intrastate rates in Texas, and thus completely change conditions that have existed for 25 years, and contrary to our rights, as we believe, and to the public interest; and

Whereas our laws do not define the conditions under which such extraordinary and far-reaching changes in the regulation of carriers should be permitted, or what conditions precedent should exist to justify such a departure from previous methods of regulation of intrastate traffic: Now, therefore, be it

*Resolved by the executive committee of the American National Live Stock Association, representing the live-stock industry of the United States, at its meeting held in Denver, Colo., September 16, 1916, 1.* That we deprecate any conflict of jurisdiction between the State and Federal authorities engaged in the regulation of railways, and we urge that every reasonable effort be made to avert it, for we believe that the necessities of the transportation problem require that strictly local State rates be regulated by the States, as at present, and that any question of discrimination or preference between State and interstate rates should be handled by coordinate action of State and Federal authorities.

2. That we appeal to the Interstate Commerce Commission to suspend its order in the Shreveport case with respect to the rates on live stock until a more complete investigation may be had of all the factors surrounding the transportation of live stock between Texas and Shreveport, and in order that a careful review may be conducted by State and Federal officials as to the almost irreparable injury that the decision will inflict upon the vast interests of Texas, far removed from any possible connection or relation to the issues in said Shreveport case; and we urge that this request be granted so that the Interstate Commerce Commission may not indirectly assume jurisdiction over State rates and thus absolve the railroads from obedience to the regulations of the different States, without an earnest endeavor being made to harmonize any alleged inequalities in rates.

3. We appeal to Congress to provide by law that where a conflict arises as to rates, rules, or regulations made by State and Federal authorities, before the Interstate Commerce Commission shall have jurisdiction over any State-made rates, rules, or regulations, and before the railroads shall be authorized to disregard same in order to perform their duty under the act to regulate commerce, said State-made rates, rules, or regulations must first have been held by a court of competent jurisdiction to be unreasonable and to constitute a direct burden upon interstate commerce.

4. That before such jurisdiction shall be exercised by any court or by the Interstate Commerce Commission the State-regulating authority should be made party to such proceedings, and all interested shippers should have the right to be heard.

5. We appeal to the State authorities having control of railroad regulation and to the executive and legislative departments of the different States to provide ways and means whereby the public rights in the premises may be secured and defended.

6. We express full confidence in the administration of the act to regulate commerce by the Interstate Commerce Commission, and this appeal is made without any feeling or spirit of criticism, but for the purpose of evoking the most mature and deliberate consideration of so grave and important a question and to determine the extent to which the Interstate Commerce Commission may appropriately interfere with State regulations, if at all, and the limitations of that power.

*Resolved further*, That a copy of this resolution be forwarded to the Interstate Commerce Commission, to each Member of Congress, and to the various State railroad officials and executives of the different States.

We also submit herewith a resolution passed by the executive committee of the National Live Stock Shippers' Protective League at its meeting in Chicago on November 14, 1916, as follows:

CHICAGO, November 17, 1916.

Seeking "State rights" in the matter of railroad rate regulations and other conditions dealing with intrastate railroad affairs, the National Live Stock Shippers' Protective League is calling upon Congress to desist from passing legislation which will give the Interstate Commerce Commission power to prescribe rates on intrastate shipments. The executive committee of the shippers' league, at its meeting held in Chicago, November 14, 1916, passed the following resolution:

"The National Live Stock Shippers' Protective League, an organization of live-stock shippers of the United States and the shippers of fresh meats and packing-house products, composed of organizations of stock raisers of various States, the national live-stock associations engaged in the live-stock business, live-stock exchanges of live-stock commission men at the various markets, and the meat packers and slaughterers of live stock, and representatives of railroad commissions of Iowa, Kansas, South Dakota, and Missouri, submit to the committees of Congress having consideration of legislation pertaining to transportation rates, regulations, and practices of railroads engaged in such transportation the following resolution as voicing the sentiments and desire of this organization and live-stock shippers and other shippers generally:

"Be it resolved by the executive committee of the National Live Stock Shippers' Protective League at its meeting at Chicago on November 14, 1916, First, that we oppose any law or laws which shall take away from the State railroad commissions, corporation commissions, or other rate-making bodies of the several States the right and power to regulate the rates and transportation of intrastate traffic or otherwise to deprive the States of control over the same; and

"Second. That we urge upon Congress the passage of an act so amending the act to regulate commerce as to define and limit the powers of the Interstate Commerce Commission so as not to interfere with the rates on intrastate commerce as prescribed by railroad commissions or other authorized authority of the several States to prescribe and regulate rates and transportation of intrastate traffic within such States; and that the Interstate Commerce Commission shall not interfere with such rates, regulations, and practices of such State unless the same shall have first been found to be unjust and unreasonable and to place an undue burden upon interstate commerce by a court of competent jurisdiction provided for by law, and then only to the extent that may be necessary to remove a discrimination specifically alleged and clearly proven to be unjust and unreasonable."

NATIONAL LIVE STOCK SHIPPERS' PROTECTIVE LEAGUE.  
EDWARD F. KEEFER, *Secretary*.

These resolutions we submit as voicing the sentiment and desires of the entire live-stock industry of the country with respect to the subject of Federal control of State rates, regulations, etc., and, as we believe, expressive of the sentiment of the people generally who take the pains to inform themselves upon the subject, where they are not under some sort of misapprehension, or who may be unduly, though in many cases unconsciously, influenced by the great and powerful influence of the railroads, permeating, as that influence does, many great industries and financial institutions with which they are closely allied or those who have been influenced by a campaign of publicity favoring the centralization of the control of all rates and regulations of railroads by the Federal Government, and eliminating thereby the State control.

We may be permitted to express the view that in the complex situation and the manifold difficulties arising out of the regulation, or the

attempt to regulate the charges and operations of railroads in their daily transactions in millions of instances with every industry, time and opportunity do not afford the ordinary man much chance of analyzing the functions of government, the necessities of trade, and of the public interest to enable him sufficiently to master the subject as the basis of correct opinion. Newspaper writers are oftentimes little less informed, and consciously or unconsciously, or by reason of their surroundings and environment, are led into the advocacy of propositions unsound and untenable in the face of the correct analysis of the subject of the regulation of transportation in the interests of the public, and at the same time in fairness to the carriers. This in turn as often mislead the public.

It will be understood, of course, that the agitation, if it should be called such, of the proposition for Federal control of these matters of transportation and the abolitionment of State control is comparatively of recent origin, because doubtless the rights of the States seem fully preserved under the Constitution and the provisions of the act to regulate commerce, which by the first section of the act provides:

That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid, nor shall they apply to the transmission of messages by telephone, telegraph, or cable wholly within one State and not transmitted to or from a foreign country from or to any State or Territory as aforesaid.

Not until the decision of the Supreme Court of the United States in the Shreveport case (234 U. S., 342) was it generally supposed either that Congress could confer such power upon the Interstate Commerce Commission or had done so. In its essence that decision is that while the Interstate Commerce Commission can not prescribe the rates on intrastate traffic it may find a discrimination to exist by reason of the difference between the rates within a State prescribed by the State authority and the rates between such State and a point outside of the State and order the carriers to remove the same, whereupon the carriers may disregard such rates within a State prescribed by State authority in order to comply with the order of the Interstate Commerce Commission to remove the discrimination. A careful consideration of that case in connection with the Minnesota rate case just preceding it will inevitably lead to the logical conclusion that as to such intrastate rates the carriers are left free from any regulation either by the State or the Federal Government.

The fundamental right of the public, both as to interstate and intrastate rates, is that they shall not be charged more than is reasonable and of the carriers that they are entitled to charge as much as is reasonable. The further fundamental proposition is that not every rate or every service is required by law or practice to yield an equivalent profit compared to all rates or to some other rate, but the underlying principle is that a system of rates, which system, upon the whole, is to be reasonable, is to be the standard rather than the attempt to make a standard of a particular rate. This is fully illustrated by the decisions of the Supreme Court of the United States in *St. Louis & San Francisco Railway Co. v. Gill* (156 U. S., 649), *Minneapolis & St. Louis Railroad Co. v. Minnesota* (186 U. S., 257), and the Minnesota rate case (230 U. S., 352).

The question naturally arises as to whether by section 3 of the act, condemning unjust discriminations and undue preferences, it was intended by Congress that the Interstate Commerce Commission, by an order to remove a discrimination or preference, could thereby set aside an intrastate rate made by authority of the State or license the carriers to disregard the same. Is it reasonable to suppose that Congress intended such a result, and thus leave the carrier free to make such rates as he pleases, regardless of the rates prescribed by the States, and that such rates should thereafter be subject to the control of the Interstate Commerce Commission without specific provisions in the law to that effect? The whole course of judicial decisions shows that when a State rate is set aside as being confiscatory the regulation of it is not transferred to Federal control in the way of prescribing the rate; and the further question naturally arises: Could Congress under the Constitution directly authorize the Interstate Commerce Commission to prescribe the State rates on traffic originating and moving wholly within a State and not a part of interstate transportation?

What we have here said upon this subject is to bring into bold relief the question as to whether there is anything for this committee to investigate and recommend as a means of transferring the making of rates and the regulation of transportation on intrastate traffic, unless it recommends an amendment to the commerce clause of the Constitution. Surely the mere right to correct an ascertained discrimination under the method employed in the Shreveport case would be to produce the most complex situation imaginable. We do not suppose that the carriers or others holding their views in desiring the transfer to the Federal control of the intrastate rates and regulations, desire to accomplish that end short of a comprehensive system which, of course, could not be based upon the mere incidental power held to exist by the decision of the Supreme Court in the Shreveport case, which might or might not exist according to the will of the carriers themselves in given instances.

We say, therefore, that touching this subject of the transfer of control of rates and regulations as to intrastate traffic by the Federal Government, the two questions presented are:

First. Has Congress the power to do it under the existing Constitution?

Second. Shall the Constitution be amended so as to give to Congress that power and take it away from the States?

The latter is so improbable of accomplishment that it may be dismissed from consideration as a practical question before the public. It would then resolve itself down to the first question, which ought to be determined by this committee before proceeding with extensive investigations in order to determine whether it would be desirable, even if Congress has the power to exercise it. It is our opinion that Congress has not the power, and that if it has the power it should not in the public interests be exercised.

### III. POSITION OF THE RAILROADS AS WE UNDERSTAND IT.

Without attempting to state all of the various positions taken by the carriers, by their counsel, and otherwise as presented to this committee in its hearings, we refer to some of the statements as indicative of the ultimate conclusion and results which are sought,

namely, to secure greater returns upon railroad investments and securities in order to give them credit and to provide the railroads and transportation facilities needed by the public, and to that end to invite the investment of new capital and make the business attractive to investors. In other words, the means to the end of throwing off such limitations upon the rates charged as is possible, and in the aggregate to have a greater measure of return from the charges made for the services rendered; in other words, to be permitted to increase rates. And while it is said to be in the public interests, it has its origin and design in the desire to secure an increase of rates which the public must pay.

Mr. Thom, at page 55 of the printed report of these proceedings of November 23, referring to liberal charters and the granting of subsidies, lands, etc., to encourage the establishment of railroad facilities, said:

There was no limitation in most cases put upon the powers of these chartered agencies in respect to what they might do in regard to their charges, but if a limitation was put it was put so high that it did not amount to a limitation or a practical matter.

Now, the result of that was to create the impression, I may say, to create the conviction on the part of the man who invested his means in a railroad that he was investing it as he would in any other private enterprise. No other conception was in the public mind, because the need for it had not then appeared; no other conception was in the mind of the investor; he had no reason to have any other conception, as he was not only welcomed but urged by the public to enter upon this field of human industry. Now, what was the effect of that? Examining human motives, watching the operation of human interests and human forces, what was necessarily the effect of that, in the first instance, upon the conception of the investors in these properties as to their rights? Inevitably it produced the impression that they had engaged in a private business and that they owned it and could use it for their private ends. Now, time went on.

These conceptions of the rights of the railroads to increase rates are exactly the same as they were. The difference lies in the method of accomplishing this end.

Again referring to the victory of the public over the opposition to public regulation, he states at page 56:

But it was a victory won in anger; it was a victory which was the outcome of fierce conflict, and the terms that were imposed were the terms of the victor upon the vanquished, and reflected merely the purpose to apply in the principles of the system of regulation the forces of correction and punishment.

Thus the same spirit is now manifested before you. The question is, What terms were imposed? Broadly speaking, and as reflected by the act to regulate commerce and the various enactments of the different States, the terms imposed were that rates should be just and reasonable and alike to all without unjust discrimination or undue preference, coupled with the provisions of the law for its administration in justness and fairness to the public and to the carriers by the tribunals provided—not by the shippers or the carriers but by the public. If the original conception as mentioned were wrong, as seems to be admitted, the present conception is equally so.

It is further stated by Mr. Thom, at page 57, that:

The things that I say and the things that are proposed must be measured by the standard of the public interests and must be determined by the standard of the public interests, and I shall make no other argument.

Now, what is the public interest in respect to transportation? Let us pause for a moment and get that in our minds. As I read the needs of the public

they are to be assured of sufficiency of railroad and transportation facilities now and in all the future, and, of course, to be assured of them on reasonable terms; but if it becomes a question between high charges and the existence of these facilities, I suppose there will be no dissent from the fact that the public interest is, after all, in having the facilities.

Thus the reasoning leads quickly to the demand for higher charges. Naturally we should suppose that the legislation which seems to be the object of the carriers to secure must be expected to accomplish that end, otherwise it were a useless task to ask for it. Neither can we dissemble the fact that it is their main purpose, and equally that they are not satisfied to leave it to existing methods of regulation.

At page 58 Mr. Thom further states:

We have no controversy any longer about a lack of power to deal with rates that are too high. Some think that there are none too high, others disagree with that view, but all appreciate that the existing governmental systems are adequate to deal with the question of the level of rates, to the extent of preventing them from being exorbitant. So that we must come back to this question of whether or not I am right in insisting that the fundamental and essential interest of the public is now in the great question of whether or not existing systems guarantee to the public an adequate supply of transportation facilities not only for the present but for the future.

If, therefore, it becomes a question, as stated on page 57, between high charges and these facilities which can only be had according to the argument through the means of higher charges, it might as well have been stated at the outset that the object of the propositions advanced was to obtain higher charges.

Again it is stated by Mr. Thom, at page 58, that:

Those who propose a change in existing methods must make their appeal to the judgment of the people upon the proposition that existing methods do not assure to the public the supply of transportation facilities that the public needs, and those who oppose any change must make their appeal to the public judgment on the proposition that existing conditions, if honestly administered, do assure to the public an adequate supply of transportation facilities. Now, is not that a fair statement of the issue which we should debate?

Mr. Thom thus states the proposition which he proposes to adopt. He then states the crux of his argument in the expression, at pages 58-59, which follows:

No theoretical view of the proper distribution of governmental powers can have any weight with you or with the judgment of the people of this country, unless under the proposed distribution of governmental powers adequacy of the transportation facilities of the country is assured. No private interests, no cherished theories of government, can be permitted to enter here unless they come with a guaranty in their hands that what they propose will protect the public in the matter of transportation facilities.

Therefore, gentlemen, I shall debate this question on the theory that I must sustain the propositions which I shall advance by showing not only that the public interests are promoted by them but that they tend to give greater assurance to the public of the continuing efficiency of transportation facilities in this country.

Thus the matter is made perfectly plain that all other considerations respecting constitutional rights and the division of the powers of the Government as we have known them since its establishment must give way to the one controlling proposition that adequate transportation facilities must be supplied, which, as previously stated, must depend upon the adequacy of revenues to provide such transportation facilities, or the rates must be high enough to yield a return under all circumstances that will induce private capital to

invest in supplying such facilities, which condition shall be thereafter kept up by continued rates high enough to carry out the scheme.

This amazing proposition is disclosed in the nature of a demand for legislation to compel the people to provide the transportation facilities for the railroads to own. If it has ever been presented heretofore before any of the committees of Congress throughout the lengthy hearings, we should like to be informed of that fact. It is the first time that this bold proposition has been seriously made, so far as we are aware. It has been sometimes asserted by the representatives of the carriers before these committees and elsewhere, that the regulation of rates should carry with it the guaranty of an adequate return upon the property engaged in the public service. No such proposition has ever received serious consideration by Congress or the Interstate Commerce Commission or any other regulative body, or by the Supreme Court. The public does not guarantee tonnage or insure against bad management, bad judgment, or misadventure.

We shall therefore, so far as our argument may be considered, demur to the conditions thus placed upon it and decline to accept those conditions.

The very fact that the carriers have failed to furnish sufficient transportation facilities or so managed their business as not to be able to utilize the same efficiently under this theory carries with it exemption from liability to furnish those facilities and places upon the public the burden of rates sufficiently high to enable the railroads to purchase them and own them. It necessarily assumes the acme of perfection in the management of these properties when, as a matter of fact, there is probably more inefficiency in railroad operations than in any other important line of business in this country.

This is fully illuminated by the situation which presents itself whenever any rate or charge is called in question as being unreasonable, actually or relatively, when the question of the cost of the performance of the service and the resulting profit from the rates paid is uniformly announced by the railroads to be not ascertainable and not known to them. Of this subject we shall speak at more length hereafter.

It has repeatedly been the case that in order to induce the return of cars by connecting lines and other foreign lines the per diem for the use of cars and the demurrage charges against shippers have been increased 100 and up to 200 per cent above the normal. That is the condition at the present time. Inquiries by the Interstate Commerce Commission and the result of its investigations concerning car supply has drawn forth the oft-repeated excuse, be it valid or otherwise, that the railroads which furnish themselves with cars, if they could keep them in their possession or an equal number in the interchange of loaded and empty cars, could fully supply the demand for cars on their lines, but because other railroads which had not a sufficient supply had taken and appropriated the use of the cars of the line having a sufficient supply and wrongfully refused to return them, they were unable to supply the demand. This was notably the case as developed by the investigations of the Interstate Commerce Commission growing out of the car shortage of 1907, to which attention was called by Mr. Thom, at page 59 of his statement. The report of the commission was filed with the Committee on Interstate Commerce

of the Senate. The same condition has just been developed in the investigation now being conducted by the commission. Must it be assumed as a postulate that whatever the carriers do is right and that the public must be taxed to supply the facilities which the law requires them to have, and that the public must answer in money for the failure of efficient management by the railroad companies?

THE PARADOX THAT HIGH RATES WILL DEVELOP THE COUNTRY AND REDUCE THE HIGH COST OF LIVING.

The undeveloped agricultural lands, the insufficiency of or unequal distribution of railroad facilities, the reference to untouched forests, and particularly the conditions in Wyoming and Idaho, seem to be given prominence to prove the necessity of higher rates in order to secure more railroads. If this committee desires to know why Wyoming and Idaho have not been developed along the lines of existing railroads, inquire of Senators and Representatives from those States. The answer will be that the railroads have pursued the policy of rates so high that the reclamation projects in those States remain, to a large extent, unused because their products can not pay the existing rates and meet the competition in the great centers of consumption, and generally development has been thus retarded. The intermountain rates in this undeveloped country have been the subject of controversy before the Interstate Commerce Commission long before the enactment of the Hepburn bill, and they have stoutly insisted, and it may be said with marked success, in retaining the very peak of high rates in the very territory referred to, which accounts for the failure in the development of the natural resources of this country and its settlement, and the utilization as well of the wonderful reclamation projects established by the Government. If existing railroads in that territory, which are the advocates of the marvelous propositions now urged before this committee, can not see their way clear to develop the resources contiguous to their lines, how can it be expected that rates can be increased there to make up for the want of facilities by additional construction and still higher rates? It is truly stated by Mr. Thom, at page 61, that the people "will produce no more than they can get to market, and when you limit your transportation capacity you limit the capacity of your people for productiveness and for usefulness in human endeavor." Exactly the same thing follows where the rates are so high that the products of the locality can not be sold in competition with those elsewhere produced.

Much has been said, at pages 62 and several following pages, to establish the proposition that needed facilities can not be provided out of earnings; that it requires new money, and that to get that credit must be established; to have the credit that there shall be a guaranteed means by which the provisions of the facilities may be insured, and that must be sufficient in the way of reliable earnings to provide a return of 6 per cent, with a surplus of 3 per cent, to the investor; and that at last the decline in railroad credit, which it is stated will be called to the attention of this committee during the hearings, is due to the governmental policy, and that the amount of the revenues of the carriers is not within the control of the owners of the property. It is admitted that there should not be freedom

from regulation or the absence of regulation. It is contended that the character of regulation should be such as to increase the public confidence. However much it may be covered up with apt and skillful language, the whole object of the argument is to secure higher rates for the purposes named, which, it is asserted, are in the public interest.

We may with deference, therefore, be permitted to say that the argument should have begun with the demand for higher rates.

As we understand it, the idea advanced is that under the dual system, so called, of State and interstate control of rates and the regulation of railroads by the States and by the Government, the earnings are kept down to the point that not every locality or community which might desire to have it can obtain a railroad, and that existing railroads can not, out of their earnings, supply the needed facilities for the transportation service. So that whatever may be said to establish the proposition that is offered in support of the proposition to put under the control of the Federal Government the making of all rates and regulations pertaining to railroads, the advocates of that proposition seek that sort and character of regulation which will accomplish the end of securing a great deal more money, by measuring the standard of rates and charges by what they assert to be necessary in the public interest to secure the facilities so much adverted to. The standard of reasonableness or, put in another form, the method of ascertaining what is reasonable, is made to depend upon and limited only by the amount of money which would be required to carry into effect this Utopian theory of forcing the public to supply the facilities, the charges for which they could not in practical effect regulate.

Reduced to its last analysis we are here facing the demand said to be made in the public interest by the existing railroads of the country, that rates be made high enough to insure the construction of railroads and the supplying of facilities in competition with the proponents of this idea, dividing the tonnage and business and then increasing rates to make up for it. It proceeds upon the mere fanciful theory that increasing revenue follows the increase of rates. It may not matter that it is not stated in so many words, that is necessarily the logical sequence flowing from what they do say and might as well have been stated in so many words.

It entirely ignores the important fact, always present in all railroad operations and in the operation of all industrial institutions where the money is made by a multitude of transactions, that the volume of business is increased by the cheapness and attractiveness of it and that the profitable earnings are made from the great volume of the business rather than from the higher rates charged for it. So it is that every railroad operating economist, so far as we have ever observed, or as is disclosed in any writing or teachings, and certainly as the result of experience, seek tonnage and a volume of business and make the rates so as to induce it.

That is to say, the amount of rates charged or that can be charged in the profitable business of the railroads are necessarily limited by the business necessity of the country, and if the railroads are turned loose to make the rates as they please they can not increase their earnings just as their own will. Surely this could not be done if the

rates charged are so high, which these gentlemen seem to desire, as to insure the construction of all the railroads that any community might need, because of the universally known fact that when a business becomes so profitable as to induce a great many others to go into it, it then becomes so divided that the profits themselves cease to operate as an inducement for the further extension of such business.

Whatever may be said of it, therefore, Congress could not if it saw fit abandon all regulations, and if the States saw fit to abandon all regulations, bring about such a condition as it is argued here would be desirable in the public interest.

A few examples will illustrate this:

Suppose that some capitalists should take it into their heads to build two other trunk lines from the Mississippi River and Lake commercial centers to the large Atlantic ports, that would divide up the traffic. Could they by increasing rates increase the traffic? Take grain, for example, rather than pay the higher rates from the grain-producing territory, it would move in some other direction, by way of the Gulf ports or by way of the Lakes through Canada and Canadian ports, and thus reduce the amount of tonnage that they already have.

Suppose that were not done, but on the contrary two additional trunk lines were built from Missouri River territory to the Gulf, that would divide up the traffic, and it could not be made up for by increasing the rates, because if that were done then all the grain would move through the Atlantic ports. A thousand similar illustrations could be given to place it beyond peradventure, that the proposition that is laid down before this committee that the railroads should be permitted to charge rates high enough to provide all the facilities that anybody might desire, is a mere creature of the imagination and impossible of accomplishment. It can not be done by the abandonment of regulation, and it can not be done by concentrating it in the Government and taking it away from the States.

If it could be done, it involves within it the making of slaves for the benefit of the master, with too many masters to profit by their labor.

The difficulty that may confront the country in particular instances, and perhaps generally, is the inefficiency of railroad operation and the inefficiency of regulation. Of this we shall say more hereafter.

Rate making is not a science, as to which we submit the following pungent remarks as the result of a half century or more of experience in that undertaking, both by the railroads and the regulating authorities of the States and the Nation:

1. Rate making is not a science; it is always an experiment.
2. The only rule of universal application is expediency.
3. Carriers' object is to get the most revenue.
4. "Jones, he pays the freight"; wants it as low as he can get it.
5. Each individual, or industry, wants to prevent the other fellow getting the best of it.
6. The rule of the law is reasonableness and relative reasonableness.
7. The right of the public is that no higher rate shall be charged; the right of the carrier is that at least that much may be charged.

The exercise of judicious power over rates by the rate-making tribunals and the controversies between contending parties and the protection of these rights involve due consideration of the foregoing in practically every case.

8. The resultant rate is the arbitrary judgment of such rate-making tribunal; it is essentially a practical matter measured by no rule.

9. The law expects that judgment to be the result of the best information after due consideration of all matters of fact affecting the interests of the carrier, the shipper, the producer, the consumer, and the public.

10. Among those considerations are the cost of service, the value of the service, the profits of the transaction, the return upon the investment, the value of the property, and other factors, none of which are controlling.

11. The cost of the service must be approximated to find the probable returns and profits.

12. No equivalent of profit is required by law or possible to obtain.

13. A difference in rates according to weight carried or distance of the haul is not an unjust discrimination or undue preference.

14. Conditions of trade and competition, the location of producing and consuming markets, the facilities of trade and commerce are involved in the question of unjust discrimination or undue preference.

Rate making is therefore not a science, but the exercise of well-informed judgment.

#### IV. REASONABLENESS OF RATES, CHARGES, AND REGULATIONS THE PARAMOUNT STANDARD.

Under the common law, before the days of railroads or steamboats, the relation of the carriers to the public and the rights of each under the common law were measured by this standard. It would seem useless to go into a discussion and history of this subject, about which there can be no dispute. The growth of the carrying business and its development into necessary and indeed, if properly regulated, beneficial monopoly is well known to every student of the subject. The principle is universally conceded and arises out of the necessity of the situation. The matter which is ever present and which will always be the source of controversy will be the method of ascertaining what is reasonable.

At first statutes were enacted declaring maximum rates, defining the rights and duties of carriers and limiting the amount of charges. With the growth, particularly of railroads, of the transportation business and its monopolization this was found wholly inadequate to meet the situation so as to do justice. The complexity of the commercial and carrying trade, the great multitude of circumstances, and the innumerable services and shipments under these varying circumstances rapidly increasing with the growth and development of commerce and industries and the various character of service performed were such that it was impossible to lay down a rule of universal application or even of local application which would do justice to all.

Therefore, the more flexible method of establishing by law tribunals to hear and determine complaints and to adjust and equalize all of the matters pertaining to transportation and the rates and charges, and to prescribe the rule of conduct which in its judgment was proper in a given case, or applicable to a large number of cases, came into existence in various States for the public protection. In every instance the standard was one of reasonableness, which had been the universal rule from the earliest times recognized by law as proper. These State commissions grew by experience, and confronted by new necessities, into more complete regulating bodies, along with the growth and development of railroads, so that one State and another

following the example of its neighbors adopted this form of regulation. Not until long after the beginning of State regulation was there any attempt made by Congress to provide for the regulation of interstate transportation. In that effort Congress adopted the same standard which from time immemorial had been adopted by the common law, and reenacted in the form of statutes in the various States, and declared the standard, in the first section of the act, in the following language, which was subsequently amended to include telegraph, telephone, and pipe lines, etc.:

All charges made for any service rendered or to be rendered in the transportation of passengers or property \* \* \* shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

Up to the time of the enactment of the Hepburn bill, as is of common knowledge, no adequate provisions were made to carry out this declaration, because it could not be done unless the regulating body prescribed the rates and the services where necessary. The Hepburn bill gave that power, so that the Federal Government has only really entered upon the administration of the law in declaring the fundamental principles of reasonableness as a standard within the past 10 years. It is yet in its infancy, for one main reason at least, that the commission was not given authority to make any other than a maximum rate, which the railroads might or might not observe so long as no undue discrimination or undue preference was proven to exist which would interfere with their action in the premises: and furthermore, the commission was not given any power to prescribe a schedule of rates, but it is limited to the correction of rates to make them apply to the standard of reasonableness according to the opinion of the commission in a given case. The railroads at all times have the initiative, provided they observe the orders of the commission, so long as the same remain effective, which can not extend for over a period of over two years. So, as a matter of fact, we have no system whereby the Government makes rates on interstate traffic, but only the regulating power conferred upon the commission over the rates made by the railroads. That is entirely different in at least some of the States where the regulating body itself prescribes the entire system of rates, which must remain effective until the State commission sees fit to set it aside, or until it may be set aside because on some account it may be unlawful or violate a constitutional property right.

The beginning, therefore, of regulation, and the most effective regulation to-day, comes from the States. Of course, whatever is interstate commerce is not subject to their control or regulation, and the right under the Constitution to regulate all commerce other than interstate commerce committed to the Federal Government by the commerce clause of the Constitution, remains with the States, where it ought to and will remain.

The attempt here by this new discovery is to brush it aside as of no consequence or as an evil, but it must be understood that that attempt is made primarily by those who have always been opposed to the establishment of these bodies and the interference by them with the rates and regulations which the railroads themselves have desired to make without let or hindrance.

The arguments here presented are based wholly upon a utilitarian standpoint, as measured by the desires and wishes of those who seek and have always sought to escape all regulation that would interfere with money getting, and of such others as they may find who look with favor upon their scheme. It is idle, therefore, to talk about not being permitted to come before this committee to present any theoretical view of the proper distribution of governmental powers and to urge that it should have no weight with the committee, unless under such proposed distribution of governmental powers, adequacy of the transportation facilities of the country is assured.

A theory of government is necessary upon which to establish the fabric which protects and insures the rights of the people. Whether the theory of this Government was or was not right it has found practical application, with which we are confronted in the establishment of our laws and systems in accordance with that theory. To destroy the theory is to destroy the Constitution.

In the course of events it has come about that we have created artificial bodies, dependent for their powers and existence upon legislative enactment, and now we are confronted by them with the demand to abolish the constitutional provisions with respect to our governmental policies to suit their desires and convenience.

So there is no use to dissemble the fact that we are confronted with the proposition that the railroads will control the Government or the Government will control the railroads.

Among other things the Government and the States have established a method of determining all controversies between the carriers and the shippers, and a means of carrying into effect and practical application the standard of reasonableness as affecting rates, charges, and services, which are accessible to all. This controversy before this committee seems to arise out of the fact that the railroads are dissatisfied with the standard and system. Being dissatisfied, they wish to bring about an entirely new system to operate under entirely different standards, and when the argument is all boiled down to its last essence and the dross is skimmed off and the adulteration is eliminated, it is simply the means to the end of getting more money than is possible for them to secure under the present system; and that is practically admitted. That is what we oppose. In doing so we say that it were far better to perfect the present system of regulation, to bring up the standard of its efficiency, utilizing what has gone before and the material we have at present, to the end of bringing into practical application, to the best advantage of the entire public, the standard declared by the act to regulate commerce, as above quoted.

We can but be impressed with the strange hallucination which has produced the argument, repeated at great length, to establish a conclusion or belief in your minds that your supreme duty to the public is so as to legislate respecting rates and regulations of the railroads of this country and permit the making of charges so high and the return so certain as to give currency to railroad securities other than bonds, so that the ordinary man will invest in them, and thereby that the new money will be acquired or be obtainable for all this vast

scheme of railroad facilities. We could scarcely expect, of course, that any considerable amount of new mileage would be constructed by new and independent companies, so it must be assumed that you will enter upon the experiment of legislating into the minds of the public (by taking their money beyond what could confessedly be obtained through the present instrumentalities of freight regulation and control) confidence in such schemes, for instance, as the reorganization of the St. Louis & San Francisco Railroad Co. Have you read the confirmation of the sale back to the stockholders of that property and the payment of some of its debts by the issuance of new stock? Have you read about certain New York bankers first taking out of this property—or, to use another expression, to skim off the cream—\$5,500,000 in money by the reorganization committee, and the purchasing committee, and the loan syndicate, which latter alone got \$750,000 for its name—just for being in a state of preparedness? They counted units of money in that transaction by the million. If you want to investigate something which will throw light upon the subject of the want of confidence of the public in railroad stocks, just have a look in on that proposition. If they sold these bonds which they were permitted to issue by the Railroad Commission of the State of Missouri for par, on the representation that the property was worth the amount of the bonds issued, you make some inquiry to see whether or not the bond purchasers needed protection. If you will inquire as to the amount of expenditures by the old company to purchase little pieces of railroad which were constructed in Oklahoma, Texas, and Louisiana, compared to what they cost for the real construction, you will likewise be interested. I think you will find that that part of the road built in piecemeal and by sections, which is supposed to extend from southeastern Texas to New Orleans, was capitalized far beyond its worth. All of Mr. Thom's solicitude about the inability of railroads to construct lines into new forests will certainly disappear in the presence of this performance.

He seems to feel, judging from his statements and arguments, great fear lest the undeveloped agricultural lands of the country will not be reached by railroad facilities, the reaching of which he feels would enable the people to secure the products of the soil to live upon. We should like to invite the attention of the committee to the example of the St. Louis, Brownsville & Mexico Railroad, which extends from Houston, Tex., to Brownsville (another Frisco enterprise). Some of you are doubtless somewhat acquainted with the conditions which existed in that country before the construction of that railroad and the conditions which exist now. Five hundred miles of that road were built through a wholly undeveloped and unsettled country. It was occupied by cattle, some Mexicans and burros, coyotes, lobos, and other predatory animals, to say nothing of jack rabbits, prairie dogs, and prairie rats. Underneath the surface of that country in many places on these great ranches, among the largest and best cattle-breeding grounds in the world, were vast sheets of artesian water, which were pierced by thousands of drills, and like magic, lands which were worthless except for grass in a country subject to the severest droughts this side of the Nile became the most productive vegetable and fruit garden of things that are good to eat ever developed in this country in so short a time. Towns and

homes sprung up; people went there from every part of the United States, and it caught the eye of Mr. Bryan, who became at last a farmer. Had it not been for one difficulty, which seemed to be beyond the power of the people to control, there can be no reason to suspect that it would not have become the most prosperous country in the United States, not excepting Southern California. Let your inquiries extend to what that difficulty was, then ask yourselves the question as to whether these great pioneers of development so ably represented by Mr. Thom can be trusted with the public interests, which they are so anxious to have you turn over to them. You will find that the reason lay at the door of these carriers.

At the western rate advance hearing before the Interstate Commerce Commission in Chicago a couple of years ago these western lines were demanding an increase in rates; and among other bad conditions that required it, emphasis was placed upon the condition of the Brownsville road. There was no traffic outbound except the products of the soil, principally cabbage, onions, lettuce, melons, potatoes, and smaller amounts of other vegetables, together with live stock, some cotton, and a little corn, and on all this traffic, except cotton, the railroads were seeking an advance in rates. They did not get it on live stock, cotton, or corn, but they did on the vegetables, etc. There came before that committee a witness who had been one of the sub-officials in charge of operations, who held his office and worked on that line, and who at the time he testified had charge of some short lines winding around among the canals and irrigated farms in the Brownsville district, who in a most graphic way detailed the settlement of various districts and localities throughout, and up and down that railroad, to show that the people went there with money enough to buy their little places with 40 acres or more, which yielded to their energies most bounteous crops. Thousands of carloads of cabbage and these other various vegetables mentioned were shipped to the centers of population, finding their market mainly at St. Louis and beyond, but the conditions of trade were such that although the cabbage was ready for market long before it could be shipped and sold, it had to be held until the northern supply of cabbage was nearly consumed before a market was developed for it in that country. It being a warm country most all of the year, it was necessary to handle it with dispatch and care, in order to get it to market in a salable condition. It is true that the freight rates were comparatively low, otherwise it could not have moved at all. But it turned out that, with the cost of icing, the failure to furnish cars, the delay upon the Brownsville road, the poor condition of the old engines which had been sold to it, on paper at least, by the Frisco road (the Brownsville road being a Frisco property in some way or another), hundreds and hundreds of carloads of cabbage rotted in the fields, were spoiled in transit, or oftentimes could not be sold when it reached the market for enough to pay for the freight and icing charges. The consequence was that these people who were induced by the flaming advertisements of the Frisco Railroad, and many individuals interested in land schemes and town-site schemes, came to penury and want—they were in rage—all because of a situation which could have been remedied alone by that spirit of enterprise under which James J. Hill developed the great States of Minnesota and North Dakota. Now, Mr. Thom

seems to think it the fault of the people for not furnishing proper facilities.

If you would like some interesting reading of facts after you are through with the consideration of these platitudes, which so much adorn the reports of these hearings, get hold of the testimony on the fruit and vegetable part of the hearing of the western rate case and read that evidence. The witness above referred to stated that he went to the traffic men of the railroads and pointed out to them the great mistake they were making in endeavoring to advance these rates upon the impoverished people, and begged them not to do it. After you have read the evidence with respect to the Brownsville Railroad and that district, then turn into the chapter with respect to the onion-raising business south of San Antonio, in the vicinity of Laredo, on the I. & G. N. road and branch lines and small connecting lines that were built in that part of the country, and you will find evidence to show that on one occasion it was estimated by the general agent of the selling department of these vegetable growers that a thousand cars of onions rotted in the fields on the I. & G. N. Railroad and vicinity because the rates were such that, and the onion market such that, they could not reach the market with profit. That is another territory where the artesian water was discovered and had brought forth its abundance. That was followed by the construction of all the branch lines of railroads that were needed, and notwithstanding this situation they raised those rates 5 cents per hundred pounds. If you should have the time and opportunity to read this testimony, you will find that people were induced to go down into that country and buy these lands and enter upon their development upon advertised cheap rates for their products and a market which would be supplied by the railroads. As soon as these people were rooted to the soil and could not get away, their means being expended, these railroads, through the Southwestern Tariff Committee which holds its sessions at St. Louis, in spite of and in violation of the antitrust laws—we might say in open defiance of such laws—voted to increase these rates, so that whether the Brownsville road and the I. & G. N. road believed they should be increased or not, under the practice of this committee they would have been compelled to increase them; otherwise connecting lines would not have participated in the rates. The I. & G. N. Railroad has been in the hands of a receiver off and on for several years, and it might at least have helped these people to live whom it had helped to go there, without any ultimate harm to the persons who were the owners of its stocks and bonds. Even if it took the money out of the pockets of the bondholders, it would have been a righteous act, which human sympathy would have induced had the railroad belonged to any single individual.

Now, coming to the further development of an undeveloped country, take a look in on the construction of railroads by the Santa Fe system in Texas and that which is going on to-day, and you will find all of the Panhandle country of Texas plastered over with a spider web of railroad lines, built by the Santa Fe, and a country rapidly developing. During all these periods of the last 10 or 12 years, in which Texas has been maligned from one end of the country to the other on account of its railroad regulation and policy, there has been more construction of railroads than in any other part of the country.

Then get the printed annual report of the president to the stockholders of the Santa Fe company and take a look in on the return which that system of road, a marvel of good management and efficiency, extending, as it does, from the Lakes to the Gulf and to the Pacific, and observe the favorable results of its operation. Of course, it may happen that in the operation of a great system of roads some parts of it will not be profitable, but they are part of a system, and the system must be treated as a whole. You will find precisely the same thing with respect to the western lines other than the Santa Fe.

Two of the very extensive railroad projects constructed by the Gould systems, or so-called systems, namely, the Western Maryland and the Western Pacific, present examples of enormous expenditures, without consulting the public as to whether or not they should be made. Of course, they have some traffic, or an opportunity to get it, but when you are called upon so to legislate as to produce out of the earnings enough money to make these railroads profitable, to do which you would have to increase the rates on the parallel and competing lines, or somebody would have to do it, and it would be little less than robbery; in fact, it would be worse than robbery to make the public pay for these facilities in the way of freight rates.

There is another shining example of misadventure and bad judgment in the construction of the Trinity & Brazos Valley Railroad by the amalgamated Frisco and Rock Island interests, intended to serve these lines as an outlet to the Gulf from the termini at Dallas and Fort Worth, and also the traffic of the Fort Worth & Denver City Railway, a part of the Colorado & Southern system, which seemed to be under control, by stock ownership or some other sort of manipulation, of the Rock Island and Frisco combination. That road (Trinity & Brazos Valley) has never paid anything, and the receiver of it testified before the Railroad Commission of Texas that if rates were advanced 300 per cent it would not make it a profitable property but that what it needed was tonnage. Of course, the Rock Island and Frisco system combination went to pieces, and exhibited as a moving picture to the world the helplessness of an investor in the stock of such a concern. Yet, notwithstanding all of this, it is insisted that you shall so arrange legislation that rates can be made high enough to give the public confidence to purchase such stock and thus get new money.

You may take for another example the Colorado Midland Railroad across the Rocky Mountains to Grand Junction, a most difficult and expensive road to construct, as well as to operate, practically parallel with the Denver & Rio Grande. The rates of these two lines of roads are justifiably higher than the roads east of the Rocky Mountains in Colorado, and the divisions which are allowed on traffic originating on these lines and delivered to their connections at Pueblo, Colorado Springs, and Denver are likewise high, because these properties are most difficult and expensive to operate. Should the public be put to the expense of still higher rates to construct other lines across the Rocky Mountains and thus divide the traffic? Take the Missouri Pacific and the Santa Fe eastward from Pueblo, on opposite sides of the Arkansas River. Can it be expected other lines should be constructed in that vicinity and rates advanced to

give confidence in the public mind to purchase the securities? It may be depended upon that if other lines are needed in that vicinity the Santa Fe is able to build them, and will do so, as it did build the branch line southwest from Dodge City. Likewise the Milwaukee & St. Paul system and the Chicago & North Western have been able to build all of the needed lines that the country can by any possibility be expected to support west of the Missouri River. As to Idaho, it is quite certain that the Union Pacific does not need the establishment of public confidence in order to get the money to build such lines as may be needed, or as appears to it to be desirable, for the development of that country. So it is of the Northern Pacific and the Great Northern. Common sense teaches us that there must necessarily be a limit to the construction of railroad facilities.

Another embargo to railroad construction between great centers of commerce is the enormous expense of obtaining usable terminals. The investment in real estate would be so great, and undoubtedly is so great to-day, as to be prohibitive in the way of such railroad construction.

We therefore appeal to this committee to examine into the actual detailed facts surrounding existing lines and their traffic to show that no such theory as has been advanced and insisted upon of making rates high enough to accomplish all of these ends which you are told should be accomplished is possible. It would bankrupt the public, it would destroy its commerce, and it would be impossible for such increased rates to obtain the tonnage in most instances which would in the end amount to increased revenue. If one-half of the energy, intelligence, and expenditure of money which has been used during the past 10 years to circumvent and prevent adequate regulation and to increase rates had been used in the economies of operation and efficiency, we may express the belief at least that their condition would have been immensely improved in every way compared to what it is at present.

It can not be expected that we are to abandon all of the principles and standards which have been established through the long course of experience and put into the form of law by the various statutes of the States, as well as of the act to regulate commerce, and the decisions of the courts construing these statutes, the power and duty of commissions established for the purpose of administering the regulatory laws. We deem it not out of place to quote from some decisions of the Supreme Court of the United States applying these general principles and rules to the facts of given cases respecting some of the various tests and standards with respect to the subject of reasonableness and the proper adjustment of rates.

In *Atlantic Coast Line Railroad Co. v. North Carolina* (206 U. S., 20) it is said:

In a case involving the validity of an order enforcing a scheme of maximum rates, of course the finding that the enforcement of such scheme will not produce an adequate return for the operation of the railroad in and of itself demonstrates the unreasonableness of the order. Such, however, is not the case when the question is as to the validity of an order to do a particular act the doing of which does not involve the question of the profitability of the operation of the railroad as an entirety. The difference between the two cases is illustrated in *St. Louis & San Francisco Railroad Co. v. Gill* (156 U. S., 649; 39 L. ed., 567; 15 Sup. Ct. Rep., 484) and *Minneapolis & St. Louis Railroad Co. v. Minnesota* (186 U. S., 257; 46 L. ed., 1151; 22 Sup. Ct. Rep., 900).

In the case of *Minneapolis & St. Louis Railroad Co. v. Minnesota* (186 U. S.) it is said :

True, it may be hard to segregate hard coal in carload lots from all other species of freight and determine the exact cost to the company; upon the other hand, the commission, in considering a proper reduction upon a certain class of freight, ought not to be embarrassed by any difficulties the companies may experience in proving that the rates are unreasonably low. The charges for the carriage of freight of different kinds are fixed at different rates according to their classification, and this difference, presumably at least, is gauged to some extent by a difference in the cost of transportation, as well as the form, size, and value of the packages and the cost of handling them. Notwithstanding the evidence of the defendant that if the rates upon all merchandise were fixed at the amount imposed by the commission upon coal in carload lots the road would not pay its operating expenses, it may well be that the existing rates upon other merchandise, which are not disturbed by the commission, may be sufficient to earn a large profit to the company, though it may earn little or nothing upon coal in carload lots. In *Smyth v. Ames* (169 U. S., 486; 42 L. ed., 819; 18 Sup. Ct. Rep., 418) we expressed the opinion (p. 541, L. ed., 847; Sup. Ct. Rep., 432) that the reasonableness or unreasonableness of rates prescribed by a State for the transportation of persons or property wholly within its limits must be determined without reference to the interstate business done by the carrier, or the profits derived from it, but it by no means follows that the companies are entitled to earn the same percentage of profits upon all classes of freight carried. It often happens that to meet competition from other roads at particular points the companies themselves fix a disproportionately low rate upon certain classes of freight consigned to these points. The right to permit this to be done is expressly reserved to the Interstate Commerce Commission by section 4 of that act, notwithstanding the general provisions of the long-and-short-haul clause, and has repeatedly been sanctioned by decisions of this court. While we never have decided that the commission may compel such reductions, we do not think it beyond the power of the State commission to reduce the freight upon a particular article, provided the companies are able to earn a fair profit upon their entire business, and that the burden is upon them to impeach the action of the commission in this particular.

As aptly illustrating these principles, see the *Minnesota* case as decided by the supreme court of that State (83 N. W., 60). That court itself is given jurisdiction to supervise the rates of the State commission.

As a further analysis of the exercise of a rate-making power, the Supreme Court of Texas, which also has jurisdiction over the rates prescribed by the commission, in the case of the *Railroad Commission v. Weld and Neville* (96 Tex., 408), says :

The performance of these duties requires that classification be made so as to secure equality as near as may be in the carriage of similar articles, and each shipper is entitled to have his property carried for a reasonable compensation for the service rendered to him. In making the classification and rates of charges, the railroad companies must also be protected in their right to have a fair return for their business; but in determining this question the railroad commission must have in view the entire business operations of the railroads. A marked difference between the right of the shipper and the carrier in determining the reasonableness of rates consists in this: When considered from the shipper's standpoint, it must be reasonable as to the particular property carried; that is, the charge must not be more than a fair compensation for the services rendered to the shipper in the carriage of the particular property. When, however, the commission considers the reasonableness of rates from the standpoint of the railroads, it is not confined to the particular article, but must look to the whole business of the railroads, which are required to carry many articles at a loss, as a single transaction, which must be made up by levying higher rates upon such articles as can bear it within the limit of reasonable compensation. The rate and classification must be so arranged as to give a result of just and reasonable compensation on the entire business of the railroad company, but the rate on each article need not be reasonable if considered alone; but the aggregate must, however, produce a reasonable return. The

work of the commission, as prescribed by the article last copied, involves a comprehensive knowledge by the commission of the business transactions of railroads and of the various business interests of the people, so that by a just exercise of their ample powers the citizens may be guarded against extortions and unjust discrimination and the railroads be allowed a fair return for the service rendered to the public.

We also quote from the decision of the Supreme Court of the United States in the leading case of *Smyth v. Ames* (169 U. S.):

It can not be doubted that the making of rates for transportation by railroad corporations along public highways, between points wholly within the limits of a State, is a subject primarily within the control of that State. And it ought not to be supposed that Congress intended that, so long as it forebore to establish rates on the Union Pacific Railroad, the corporation itself could fix such rates for transportation as it saw proper, independently of the right of the States through which the road was constructed to prescribe regulations for transportation beginning and ending within their respective limits. On the contrary, the better interpretation of the act of July 1, 1862, is that the question of rates for wholly local business was left under the control of the respective States through which the Union Pacific Railroad might pass, with power reserved to Congress to intervene under certain circumstances and fix the rates that the corporation could reasonably charge and collect. Congress not having exerted this power, we do not think that the national character of the corporation constructing the Union Pacific Railroad stands in the way of a State prescribing rates for transporting property on that road wholly between points within its territory. Until Congress, in the exercise either of the power specifically reserved by the eighteenth section of the act of 1862 or its power under the general reservation made of authority to add to, alter, amend, or repeal that act, prescribes rates to be charged by the railroad company, it remains with the States through which the road passes to fix rates for transportation beginning and ending within their respective limits.

We are now to inquire whether the Nebraska statute is repugnant to the Constitution of the United States.

By the fourteenth amendment it is provided that no State shall deprive any person of property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws. That corporations are persons within the meaning of this amendment is now settled. *Santa Clara County v. Southern Pacific Railroad Co.* (118 U. S., 394, 396; 30, 118); *Charlotte, Columbia & Augusta Railroad v. Gibbs* (142 U. S., 386, 391; 35, 1051, 1054); *Gulf, Colorado & Santa Fe Railway Co. v. Ellis* (165 U. S., 150, 154; 41, 666, 668). What amounts to deprivation of property without due process of law, or what is a denial of the equal protection of the laws, is often difficult to determine, especially where the question relates to the property of a quasi-public corporation and the extent to which it may be subjected to public control. But this court, speaking by Chief Justice Waite, has said that, while a State has power to fix the charges by railroad companies for the transportation of persons and property within its own jurisdiction, unless restrained by valid contract or unless what is done amounts to a regulation of foreign or interstate commerce, such power is not without limit, and that "under pretense of regulating fares and freights the State can not require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation or without due process of law. Railroad commission cases, *Stone v. Farmers' Loan & Trust Co.* (116 U. S., 307, 325, 331; 29, 636, 642, 644). This principle was recognized in *Dow v. Beidelman* (125 U. S., 680, 689; 31, 841, 844; 2 Inters. Com. Rept., 56), and has been reaffirmed in other cases. In *Georgia Railroad & Banking Co. v. Smith* (128 U. S., 174, 179; 32, 377, 380) it was said that the power of the State to prescribe the charges of a railroad company for the carriage of persons and merchandise within its limits—in the absence of any provision in the charter of the company constituting a contract vesting it with authority over those matters—was "subject to the limitation that the carriage is not required without reward, or upon conditions amounting to the taking of property for public use without just compensation, and that what is done does not amount to a regulation of foreign or interstate commerce." In *Chicago, Milwaukee & St. Paul Railway Co. v. Minnesota*—*Chicago, Milwaukee & St. Paul Railroad Co. v. Minnesota Railroad & W. Commission* (134 U. S., 418, 458; 33, 970, 982; 3 Inters. Com. Rept., 209) it was said.

"If the company is deprived of the power of charging reasonable rates for the use of its property and such deprivation takes place in the absence of an investigation by judicial machinery, it is deprived of the lawful use of its property and thus, in substance and effect, of the property itself, without due process of law and in violation of the Constitution of the United States, and in so far as it is thus deprived while other persons are permitted to receive reasonable profits upon their invested capital, the company is deprived of the equal protection of the laws." In *Chicago & G. T. Railway Co. v. Wellman* (143 U. S., 339, 344; 36, 176, 179) the court, in answer to the suggestion that the legislature had no authority to prescribe maximum rates for railroad transportation, said that "the legislature has power to fix rates, and the extent of judicial interference is protection against unreasonable rates." In *Budd v. New York* (143 U. S., 517; 36, 247; 4 Inters. Com. Rep., 45) the court, while sustaining the power of New York by statute to regulate charges to be exacted at grain elevators and warehouses in that State, took care to state, as a result of former decisions, that such power was not one "to destroy or a power to compel the doing of the services without reward or to take private property for public use without just compensation or without due process of law."

In *Reagan v. Farmers Loan & Trust Co.*, No. 1 (154 U. S., 362, 399; 38, 1014, 1024; 4 Inters. Com. Rep., 560), which involved the validity of certain rates for freights and passengers prescribed by a railroad commission established by an act of the Legislature of Texas, this court, after referring to the above cases, said: "These cases all support the proposition that, while it is not the province of the courts to enter upon the merely administrative duty of framing a tariff of rates for carriage, it is within the scope of judicial power and a part of judicial duty to restrain anything which, in the form of a regulation of rates, operates to deny to the owners of property invested in the business of transportation that equal protection which is the constitutional right of all owners of other property. There is nothing new or strange in this. It has always been a part of the judicial function to determine whether the act of one party (whether that party be a single individual, an organized body, or the public as a whole) operates to divest the other party of any rights of person or property. In every constitution is the guaranty against the taking of private property for public purposes without just compensation. The equal protection of the laws which, by the fourteenth amendment, no State can deny to the individual, forbids legislation, in whatever form it may be enacted, by which the property of one individual is, without compensation, wrested from him for the benefit of another or of the public. This, as has been often observed, is a government of law and not a government of men, and it must never be forgotten that under such a government, with its constitutional limitations and guaranties, the forms of law and the machinery of government, with all their reach and power, must, in their actual workings, stop on the hither side of the unnecessary and uncompensated taking or destruction of any private property, legally acquired and legally held. It was, therefore, within the competency of the Circuit Court of the United States for the Western District of Texas, at the instance of the plaintiff, a citizen of another State, to enter upon an inquiry as to the reasonableness and justice of the rates prescribed by the railroad commission. Indeed, it was in so doing only exercising a power expressly named in the act creating the commission."

So in *St. Louis & San Francisco Railway Co. v. Gill* (156 U. S., 649, 657; 39, 567, 570) it was said that "there is a remedy in the courts for relief against legislation establishing a tariff of rates which is so unreasonable as to practically destroy the value of property of companies engaged in the carrying business, and that especially may the courts of the United States treat such a question as a judicial one, and hold such acts of legislation to be in conflict with the Constitution of the United States as depriving the companies of their property without due process of law, and as depriving them of the equal protection of the laws." In *Covington & Lexington Turnpike Road Co. v. Sandford* (164 U. S., 578, 584, 594, 595, 597; 41, 560, 562, 566, 567), which involved the validity of a State enactment prescribing rates of toll on a turnpike road, the court said: "A statute which, by its necessary operation, compels a turnpike company, when charging only such tolls as are just to the public, to submit to such further reduction of rates as will prevent it from keeping its road in proper repair and from earning any dividends whatever for stockholders, is as obnoxious to the Constitution of the United States as would be a similar statute relating to the business of a railroad corporation having authority under its charter to collect and receive tolls for passengers and freight." And in *Chicago, Burlington & Quincy Railroad Co.*

v. Chicago (166 U. S., 226, 241; 41. 979, 986) it was held that "a judgment of a State court, even if it be authorized by statute, whereby private property is taken by the State or under its direction for public use, without compensation made or secured to the owner, is upon principle and authority wanting in the due process of law required by the fourteenth amendment of the Constitution of the United States, and the affirmation of such judgment by the highest court of the State is a denial by that State of a right secured to the owner by that instrument."

In view of the adjudications these principles must be regarded as settled:

1. A railroad corporation is a person within the meaning of the fourteenth amendment declaring that no State shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

2. A State enactment, or regulations made under the authority of a State enactment, establishing rates for the transportation of persons or property by railroad that will not admit of the carrier earning such compensation as under all the circumstances is just to it and to the public, would deprive such carrier of its property without due process of law, and deny to it the equal protection of the laws, and would therefore be repugnant to the fourteenth amendment of the Constitution of the United States.

3. While rates for the transportation of persons and property within the limits of a State are primarily for its determination, the question whether they are so unreasonably low as to deprive the carrier of its property without such compensation as the Constitution secures, and therefore without due process of law, can not be so conclusively determined by the legislature of the State, or by regulations adopted under its authority, that the matter may not become the subject of judicial inquiry.

The cases before us directly present the important question last stated.

Before entering upon its examination, it may be observed that the grant to the legislature in the constitution of Nebraska of the power to establish maximum rates for the transportation of passengers and freight on railroads in that State has reference to "reasonable" maximum rates. These words strongly imply **that it was not intended to give a power to fix maximum rates without regard to their reasonableness.** Be this as it may, it can not be admitted that the power granted may be exerted in derogation of rights secured by the Constitution of the United States, or that the judiciary may not, when its jurisdiction is properly invoked, protect those rights.

What are the considerations to which weight must be given when we seek to ascertain the compensation that a railroad company is entitled to receive, and a prohibition upon the receiving of which may be fairly deemed a deprivation by legislative decree of property without due process of law? Undoubtedly that question could be more easily determined by a commission composed of persons whose special skill, observation, and experience qualify them to so handle great problems of transportation as to do justice both to the public and to those whose money has been used to construct and maintain highways for the convenience and benefit of the people. But, despite the difficulties that confessedly attend the proper solution of such questions, the court can not shrink from the duty to determine whether it be true, as alleged, that the Nebraska statute invades or destroys rights secured by the supreme law of the land. No one, we take it, will contend that a State enactment is in harmony with that law simply because the legislature of the State has declared such to be the case; for that would make the State legislature the final judge of the validity of its enactment, although the Constitution of the United States and the laws made in pursuance thereof are the supreme law of the land, anything in the Constitution or laws of any State to the contrary notwithstanding. Article 6. The idea that any legislature, State or Federal, can conclusively determine for the people and for the courts that what it enacts in the form of law, or what it authorizes its agents to do, is consistent with the fundamental law, is in opposition to the theory of our institutions. The duty rests upon all courts, Federal and State, when their jurisdiction is properly invoked, to see to it that no right secured by the supreme law of the land is impaired or destroyed by legislation. This function and duty of the judiciary distinguishes the American system from all other systems of government. The perpetuity of our institutions and the liberty which is enjoyed under them depend, in no small degree, upon the power given the judiciary to declare null and void all legislation that is clearly repugnant to the supreme law of the land.

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In the discussion of this question the plaintiffs contended that a railroad company is entitled to exact such charges for transportation as will enable it, at all times, not only to pay operating expenses, but also to meet the interest regularly accruing upon all its outstanding obligations and justify a dividend upon all its stock; and that to prohibit it from maintaining rates or charges for transportation adequate to all those ends will deprive it of its property without due process of law, and deny to it the equal protection of the laws. This contention was the subject of elaborate discussion; and, as it bears upon each case in its important aspects, it should not be passed without examination.

In our opinion, the broad proposition advanced by counsel involves some misconception of the relations between the public and a railroad corporation. It is unsound in that it practically excludes from consideration the fair value of the property used, omits altogether any consideration of the right of the public to be exempt from unreasonable exactions, and makes the interests of the corporation maintaining a public highway the sole test in determining whether the rates established by or for it are such as may be rightfully prescribed as between it and the public. A railroad is a public highway, and none the less so because constructed and maintained through the agency of a corporation deriving its existence and powers from the State. Such a corporation was created for public purposes. It performs a function of the State. Its authority to exercise the right of eminent domain and to charge tolls was given primarily for the benefit of the public. It is under governmental control, though such control must be exercised with due regard to the guaranties for the protection of its property. *Olcott v. Fond du Lac County Supervisors* (83 U. S., 16 Wall., 678, 694; 21, 382, 388); *Sinking-fund cases, Union P. R. Co. v. United States* (99 U. S., 700, 719; 25, 496, 501); *Cherokee Nation v. Southern Kansas Railway Co.* (135 U. S., 641, 657; 34, 295, 302). It can not, therefore, be admitted that a railroad corporation maintaining a highway under the authority of the State may fix its rates with a view solely to its own interests and ignore the rights of the public. But the rights of the public would be ignored if rates for the transportation of persons or property on a railroad are exacted without reference to the fair value of the property used for the public or the fair value of the services rendered, but in order simply that the corporation may meet operating expenses, pay the interest on its obligations, and declare a dividend to stockholders.

If a railroad corporation has bonded its property for an amount that exceeds its fair value or if its capitalization is largely fictitious, it may not impose upon the public the burden of such increased rates as may be required for the purpose of realizing profits upon such excessive valuation or fictitious capitalization; and the value of the property and franchises used by the corporation, as represented by its stocks, bonds, and obligations, is not alone to be considered when determining the rates that may be reasonably charged. What was said in *Covington & L. Turnpike Co. v. Standford* (164 U. S., 578, 596, 597; 41, 560, 566, 567) is pertinent to the question under consideration. It was there observed: "It can not be said that a corporation is entitled as of right, and without reference to the interests of the public, to realize a given per cent upon its capital stock. When the question arises whether the legislature has exceeded its constitutional power in prescribing rates to be charged by a corporation controlling a public highway, stockholders are not the only persons whose rights or interests are to be considered. The rights of the public are not to be ignored. It is alleged here that the rates prescribed are unreasonable and unjust to the company and its stockholders, but that involves an inquiry as to what is reasonable and just for the public. \* \* \* The public can not properly be subjected to unreasonable rates in order simply that stockholders may earn dividends. The legislature has the authority, in every case where its power has not been restrained by contract, to proceed upon the ground that the public may not rightfully be required to submit to unreasonable exactions for the use of a public highway established and maintained under legislative authority. If a corporation can not maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the Constitution does not require to be remedied by imposing unjust burdens upon the public. So that the right of the public to use the defendant's turnpike upon payment of such tolls as in view of the nature and value of the service rendered by the company are reasonable is an element in the general inquiry whether the rates established by law are unjust and unreasonable.

A corporation maintaining a public highway, although it owns the property it employs for accomplishing public objects, must be held to have accepted its

rights, privileges, and franchises subject to the condition that the government creating it, or the government within whose limits it conducts its business, may by legislation protect the people against unreasonable charges for the services rendered by it. It can not be assumed that any railroad corporation accepting franchises, rights, and privileges at the hands of the public, ever supposed that it acquired or that it was intended to grant to it the power to construct and maintain a public highway simply for its benefit, without regard to the rights of the public. But it is equally true that the corporation performing such public services, and the people financially interested in its business and affairs, have rights that may not be invaded by legislative enactment in disregard of the fundamental guarantees for the protection of property. The corporation may not be required to use its property for the benefit of the public without receiving just compensation for its services. How such compensation may be ascertained and what are the necessary elements in such an inquiry, will always be an embarrassing question. As said in the case last cited: "Each case must depend upon its special facts; and when a court, without assuming itself to prescribe rates, is required to determine whether the rates prescribed by the legislature for a corporation controlling a public highway are, as an entirety, so unjust as to destroy the value of its property for all the purposes for which it was acquired, its duty is to take into consideration the interests both of the public and of the owner of the property, together with all other circumstances that are fairly to be considered in determining whether the legislature has, under the guise of regulating rates, exceeded its constitutional authority and practically deprived the owner of property without due process of law. \* \* \* The utmost that any corporation operating a public highway can rightfully demand at the hands of the legislature when exerting its general powers is that it received what, under all circumstances, is such compensation for the use of its property as will be just both to it and to the public."

We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates described by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth.

We also quote from the case of *Reagan v. Farmers' Loan & Trust Co.* (154 U. S., 362), as follows:

It is unnecessary to decide, and we do not wish to be understood as laying down as an absolute rule that in every case a failure to produce some profit to those who have invested their money in the building of a road is conclusive that the tariff is unjust and unreasonable. And yet justice demands that everyone should receive some compensation for the use of his money or property, if it be possible without prejudice to the rights of others. There may be circumstances which would justify such a tariff; there may have been extravagance and a needless expenditure of money; there may be waste in the management of the road; enormous salaries, unjust discrimination as between individual shippers, resulting in general loss. The construction may have been at a time when material and labor were at the highest price, so that the actual cost far exceeds the present value; the road may have been unwisely built, in localities where there is not sufficient business to sustain a road. Doubtless, too, there are many other matters affecting the rights of the community in which the road is built as well as the rights of those who have built the road.

The foregoing quotations have reference more particularly to the question of the standard of reasonableness and the relative rights of the roads and the public in respect thereto.

As bearing upon the same general principle, however, and having reference more particularly to the question of undue preference, or put in another form, unjust discrimination, we quote from the decision of the Supreme Court of the United States in the case of *Texas & Pacific Railway Co. v. Interstate Commerce Commission* (162 U. S.), as follows:

"Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or advantage, or subject to undue prejudice or disadvantage persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests, and upon the same principles which are regarded as sound and adopted in other trades and pursuits. Conceding the same terms of contract to all persons equally, may not the carrier adopt both wholesale and retail rates for its transportation services?"

Again:

"The English cases \* \* \* establish the rule that in passing upon the question of undue or unreasonable preference or disadvantage, it is not only legitimate but proper to take into consideration, besides the mere difference in charges, various elements, such as the convenience of the public, the fair interests of the carrier, the relative quantities or volume of the traffic involved, the relative costs of the services and profit to the company, and the situation and circumstances of the respective customers with reference to each other as competitive or otherwise."

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The conclusions that we draw from the history and language of the act, and from the decisions of our own and the English courts, are mainly these: That the purpose of the act is to promote and facilitate commerce by the adoption of regulations to make charges for transportation just and reasonable and to forbid undue and unreasonable preferences or discriminations. That, in passing upon questions arising under the act, the tribunal appointed to enforce its provisions, whether the commission or the courts, is empowered to fully consider all the circumstances and conditions that reasonably apply to the situation, and that, in the exercise of its jurisdiction, the tribunal may and should consider the legitimate interests as well of the carrying companies as of the traders and shippers, and in considering whether any particular locality is subjected to an undue preference or disadvantage the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment.

The considerations which the court has held in these cases and many others as guides in some degree at least, with no particular factor as controlling, must be alike applicable to a correct decision of the State commission or the Interstate Commerce Commission. Wherein lies the difference?

In every case the force to be given to the findings and actions of either commission is because of their superior knowledge and opportunity to know and determine the facts upon which they base their decisions, and it is assumed in every such case that the commission which rendered such a decision is possessed of such superior knowledge.

It would seem entirely unnecessary to mention these fundamental principles, and we should not do so were it not for the very boldness of the proposition, as we understand it, presented to you by the railroads to do that which amounts to an abolition or wiping out entirely of everything that has been done heretofore.

We must not lose sight of the fact that in the history of government there has been a constant development of the principle that the weak must be protected against the strong. The distribution of the powers of government as widely diffused as possible is but an insurance against the control of the administration of laws by the strong for their own purposes against the interest and in destruction of the rights of the weak. It is a matter of too common knowledge to even require a reference to it that the individual dealing with a great transportation company is perfectly helpless. He must depend upon the strong arm of the law. The great and powerful may depend upon their influence. It is immaterial to a great railroad corporation whether it handles an individual's ordinary business or not. But that is not the case with the great industries of the country whose business is so important that they may bring into play competitive forces which will always enable them to reap the best of the bargain, no matter what the laws are or how ably and impartially they are administered. If it is a correct principle that the Government should be a government for the people and by the people, as of general application, that is true in a superlative sense with respect to the matters of transportation. And as we approach the small business of shorter distance by the law regulating supply and demand, the necessity for local control becomes greater, and so the right of the local community to select and provide its own means of regulation, subject of course to appropriate limitations, must be the better form. That local control by communities can not be less, of course, than the exercise by a sovereign power of the functions of government, and hence it must be the States which regulate it as to matters over which the States have jurisdiction, but in almost all instances the States have surrendered that right with respect to public utilities of cities. The States reserved that right in the organization and establishment of this Government.

The principles of the law of regulation must be conformed to both by the administrative bodies of the States as well as the Nation. Nothing in experience or observation so far can be found which would justify the taking away of this right.

#### V. THE BENEFIT OF THE STATE COMMISSIONS TO THE PUBLIC.

We lay it down as a proposition that can not be gainsaid that the nearer the government is to the people and the closer men are to the subject matter under their jurisdiction in the administration of law, with the accumulation of knowledge arising from immediate association and daily observation of conditions pertaining thereto, the more apt they are to avoid mistakes and to perform the functions of their offices beneficially. There is nothing so intimately associated with the daily life and business of men as commerce, and transportation is truly the lifeblood of it. It extends from the grass roots to the banks, to every possible avenue of production, sale, and consumption of that which goes to make up the sum total of the business of every community. No words of description can adequately portray how every individual and every business in daily life is to be affected by it, and the less knowledge that a public official has of the entire situation with respect to the business of a community by daily and constant

contact with it, the less capable is he to efficiently and properly regulate and administer laws and to regulate in justness and fairness to all concerning such business, and particularly is this true respecting the service of transportation. Throughout the history of the world local self-government, honestly administered, has always been the best government and has been so regarded by the people themselves. Particularly is that axiomatic, so to speak, in this country.

The power of the regulation of commerce and the transportation companies and the charges made and services rendered is the most far-reaching prerogative of government. Ordinarily the rules of conduct should be prescribed definitely by law. In this particular matter, however, experience has shown that it is wholly impracticable to do that; hence the law defines the general rights, duties, and powers for guidance, and leaves the details in the hands of a board of commissioners to work out and prescribe, supposedly to fit the circumstances as they may exist in varied form and by changes of time and conditions. The presumption of law is that the object to secure men capable and honest to administer the law will be accomplished. Like all human institutions there will be instances where that may not be accomplished for one reason or another for all of the time, but at last the people must be depended upon to govern themselves, and in the end it must be expected that it will be honestly done. To say that a great State with its millions of people, law-abiding citizens, in an intelligent country like this, can not secure, will not secure, or do not secure as capable men as the Government can secure to perform the functions of office is contrary to experience. In some instances they may not; in most instances they will, and that is manifest from the fact that the General Government must at last secure its talent from the various States. Perfection is not to be expected; the best we can do in the administration of law is an approximation to any standard which we may prescribe.

The State commissions being acquainted with conditions in their respective States, in daily contact with its people, and understanding its business and necessities, have opportunities to know and inform themselves on the details with respect to those things which they ought to know, ought at least to be able to determine what is right in the administration of the laws which it is made their duty to enforce. This is not said in disparagement or by way of criticism, or with any thought of that, respecting the Interstate Commerce Commission and its various employees whom they call to their aid of necessity, in order to perform the duties imposed upon the commission under the act to regulate commerce. The idea is that there is at least as little danger of mistake and as great an opportunity for efficiency in the administration of the State laws respecting transportation locally within the State under the system which exists as there would be under any other method which could be provided whereby men must be depended upon to exercise these governmental functions. The people of a State are no more prejudiced than the people of the Nation composed of such States, and the contention that the people of the States are prejudiced against their railroads to the extent of dealing unfairly with them would seem to call for investigation to ascertain whether they were justified, if, indeed they have such prejudice. We hazard the suggestion that the charge, where made, of a State being prejudiced against its railroads has for

its underlying motive the desire to escape the State regulation. It would seem improbable that the people of a State should be prejudiced against such great and important institutions without a justifiable cause. If, therefore, by reason of existing prejudice the railroads of a State can not or do not obtain justice in the matter of the regulation of the business in such State, let them search for the cause of such prejudice and remove it. It furnishes no ground for the destruction of the State commissions by such revolutionary change as to transfer their functions to the Federal Government.

No one will expect, of course, that these State rates and transportation services will go unregulated, and so the question naturally arises whether any proposition is offered that will be certain to result in a better system than we have now. There is no use of guessing at that, nor need we expect guesses as the basis of making any change, and much less should we accept the proffered solicitude for the public by the carriers, who have constantly attempted to escape all regulation. We insist that the regulation of the rates and the service of transportation locally within a State is even more important to people less able to protect themselves because of the small units of business than is applicable to the great mass of traffic moving interstate. The people of the States are not objecting to the Government regulating those things which are within its constitutional rights, on utilitarian grounds or otherwise, but they do object, of course, to surrendering the control of their local affairs of this important sort, because they do not see anything to gain by it. Not only is it not proposed that they shall gain anything by it, but the proposal involved of necessity is a loss to them for the purposes at least of an equivalent or greater gain to the railroads.

The history of governing bodies or individuals of nations, from king to bailiff, is the history of a thirst for power. The concentration of that power affords the opportunity for its domination. The distribution of that power among the people makes it impossible to dominate it. It is often said that it is the tendency of the times to have a centralized government, and this committee is now called upon to recommend that the most important function of government be taken from the States and concentrated at Washington—an object that is perfectly impossible of accomplishment.

It was emphasized before you that we should take stock and a survey of what we have done and are doing in the matters of the regulation of our railroads, supposedly for the purpose of ascertaining such evils as may exist in order that we may correct them. That was a laudable purpose. But if by taking stock and a survey of the situation we are at the same time to enter upon the experiment of abolishing the State commissions and placing the power in the hands of the Government to regulate our local affairs, the next inventory will be by and on behalf of the people to see how far their rights have been taken away and the control of their local affairs concentrated in Washington. The result can not be doubted.

CAN THE INTERSTATE COMMERCE COMMISSION BETTER ADMINISTER THE REGULATION OF STATE RATES THAN THE STATE COMMISSIONS?

Space forbids quotations and references to numerous decisions of the Interstate Commerce Commission, which has placed itself on

record on this subject by the repeated announcement that the State commissions, being better acquainted with the local situation and local affairs, are better able to determine these matters coming under their jurisdiction than is the Interstate Commerce Commission itself. The mere fact that the railroads desire that the Interstate Commerce Commission shall regulate and control the local rates in a State should not be given greater consideration than what the commission itself thinks. Those of us who desire to retain the State control and regulation of State rates by State commissions do not base that desire upon the question of the ability of the Interstate Commerce Commission to perform the same service if the requisite opportunity afforded the means of doing it to the best advantage. We must all recognize that the Interstate Commerce Commission has been absolutely swamped with the demands made upon it in the administration of the laws respecting interstate commerce, and it is now urgently insisted that the members of the commission be increased and powers given to divide up the subject so that they can speedily and satisfactorily discharge their duties respecting interstate commerce.

That body has found it advantageous to make use of the rates and regulations of State commissions in arriving at a conclusion with respect to the interstate rates. Since there is no possibility of uniformity in the sense that there are any rules that can be laid down for making rates, they must of necessity be based upon the circumstances of a given case. It seems to us perfectly patent that the action of the State commissions, as well as that of the railroads themselves, respecting similar rates and services to that which may be under investigation by the Interstate Commerce Commission in a given case, is a great advantage to the latter in reaching a correct conclusion. Not that the Interstate Commerce Commission is bound to accept what the State commissions or the railroads may have done, but it is certainly a great advantage to know what they have done, and give it that weight to which the commission thinks it is entitled. If we should adopt any system of regional commissions, so-called, in certain districts or States, so that they will have the advantage of the knowledge to be gathered from familiarity with the matters with which they deal, would the Interstate Commerce Commission be any better off or any better able to decide what ought to be done because of the recommendation of such regional commissions than they are with access to the action of the State commissions and the railroads, which throw light upon the subject in the given case which the Interstate Commerce Commission may have under consideration? The proposal to establish regional commissions for the purposes which have been pointed out, and mainly to avoid the charge of destroying the local control and the benefits of the service of those who are best acquainted or who would become best acquainted with the situation in a given locality, is but a mere inducement held out to meet the objection that by abolishing the State commissions the local control is taken away. It has not been shown, and can not be shown, that such regional commissions could better regulate the local rates and matters of transportation than do the State commissions when they properly perform the functions of their office. The right should remain with the State and it should be expected that the agencies which they employ in the premises will

be capable and efficient in the performance of their duties. The rates on a given railroad or any given locality upon one or more commodities for movement wholly within a State would not be any less local, and the proper adjustment thereof subject to the local situation, if regulated by the Interstate Commerce Commission than by a State commission. Every rate and regulation must depend upon the circumstances of the case, and be adjusted according to the situation as presented.

The most that can be said, it seems to us, in behalf of turning over to the Interstate Commerce Commission the regulation of local rates within a State, is that it may lead to uniformity and a regulatory system better suited to the public needs than the existing method. It is intensely a practical question, and if due consideration be given to the subject matter to which these local rates and regulations apply it will at once be seen that no system of uniformity could possibly be adopted which would be based upon any intelligent theory. We heretofore pointed out that rates are the creatures of circumstances and must be regulated according to the circumstances. Unless the Interstate Commerce Commission could change these circumstances, it is a mere fanciful supposition that they could make the rates any better to suit the public needs than an efficient and well-qualified commission can make them. What is the advantage, therefore, of undertaking such a radical change upon the mere guess that benefits will flow therefrom?

#### STATE COMMISSION REGULATION AS A BALANCE WHEEL AGAINST THE DANGER OF RAILROADS DOMINATING THE FEDERAL CONTROL.

At page 130 Mr. Thom makes the significant statement, as follows:

Our third suggestion would be—but before arriving at that third suggestion I wish to state that I do not for a moment contend that this railroad problem will have its panacea by the mere concentration of authority in the hands of the National Government. It will be helped; it will be simplified; it will be robbed of a great many of its dangers; but there still remains an unsolved problem. It will be necessary, in addition to that, to perfect, to strengthen, and to reorganize the principles of Federal regulation. The object of getting it into the hands of one body is to have it where its processes can be readily controlled and readily perfected, so as to work up to a real solution of the problem; and I want just here to digress to say that if all we propose is done there will not be, by virtue of that act alone, a single cent of additional revenue brought to us.

We are not asking this committee, or asking Congress, to pass upon the sufficiency of our revenues; we are not asking them by act, or by any act that you shall recommend, or that Congress shall pass, to increase our revenues. We are simply asking that you shall perfect machinery that can readily and adequately respond to a condition which in the public interest will require an addition to our revenues.

Particular attention is directed to the expression that "the object of getting it into the hands of one body is to have it where its processes can be readily controlled and readily perfected, \* \* \* there will not be, by virtue of that act alone, a single cent of additional revenue brought to us." Then follows the further singular contradictory statement: "We are simply asking that you shall perfect machinery that can readily and adequately respond to a condition which in the public interest will require an addition to our revenues."

We must confess that we can not understand the meaning of this language.

The State control of railroad rates and transportation of intra-state traffic is extraordinarily important, from a practical standpoint, as a protection against any wholesale harm which might follow placing the control so far away from the people and their power of selection of the men who are to administer the law as to deprive them of the practical opportunity to secure their rights. We are not saying that the railroads would get control of the Interstate Commerce Commission or of the regional commission proposed were they established; although we have no doubt, neither can any intelligent person doubt, that they would do it if they could. But we are speaking more directly to the point that the greater the concentration of the powers of Government at Washington and the further the individuals who administer the law are removed from the people and the subject matters which they control the greater will be the difficulty in the individual obtaining any practical and prompt relief against abuses and oppressions likely to be placed upon them by these great carrying companies. So long as the States can control it themselves, as to their local rates and transportation service, the more likely it is that remedial rights of the individual may be enforced.

A few examples to illustrate the point we seek to make in favor of the continued control and the perfection of it may be useful in reaching a correct conclusion.

The State of Illinois is—or at least has been—the greatest corn-producing State, and Chicago is the great central corn market. Reasonable rates for the movement of corn to Chicago from points in Illinois are prescribed by the commission of that State. Of course, Chicago may and does draw its supply as well from other States, but the very fact of the existence of a certain set of rates in that State to Chicago causes the railroads in serving the corn belt in Illinois or serving the corn belt in the Missouri Valley to seek the traffic and tonnage over their lines to Chicago, in order to do which they must make rates comparable to those in the State of Illinois. The same thing may be said of coal that is extensively produced there, as well as of live stock and many other products. The people of the State are entitled to reasonable rates and should not be obliged to pay more in order that the general level of rates should be raised so that railroads reaching Chicago from elsewhere might profit by the transaction. It is easy to be seen that if such a rule should be adopted the rates in every State would be made up to the very highest notch that would enable any railroad supplying such a central market to make money out of its business. It would eliminate entirely the matter of competition and the advantage of locality. There are 20 or more packing plants in the State of Iowa where hogs are extensively slaughtered and put into form for shipment everywhere, in competition with the output of the great markets of the Missouri River and at Chicago. The hog raisers of the State of Iowa are entitled to reasonable rates to reach these points where they sell their hogs, and it would be manifestly unfair to force the people of Iowa to pay a higher rate on hogs than is reasonable to points in that State, in order that some other railroad reaching St. Paul from Iowa might charge rates high enough on hogs to make the business profitable, if it were necessary to accomplish that end. The rates, therefore, in the State of Iowa on hogs would naturally have a material bearing on rates to Austin, Minn., or to St. Paul, for the reason that the

railroads reaching from the State of Iowa to those centers would desire to participate in the traffic originating on their lines or the lines of their connections.

Omaha and Kansas City are large grain and large stock markets, located on the State line, which, as to Kansas City, is a more imaginary one, running right through the exchange building in the stockyards, cutting off part of the facilities in the State of Kansas and part in the State of Missouri. The rates to Omaha from Nebraska on corn and live stock is, of course, a State rate, and the people there are entitled to have the traffic move at a reasonable rate. Assuming such reasonable rate to be established, if that is materially lower than the interstate rate from Iowa to Omaha, the industries at Omaha would draw their supply as largely as possible from the State of Nebraska rather than from the State of Iowa. But the self-interest of the railroads themselves operating in the State of Iowa up to the Missouri River would induce them to adopt rates comparable with those of the State of Nebraska, in order to get the benefit of the traffic.

At Kansas City the movement into market of live stock from the State of Kansas is either State or interstate, according to the line of railroad over which it moves and the route it takes in reaching the stockyards. Manifestly the rates must be the same both State and interstate, and since the State of Kansas prescribes the rates on the State traffic, it follows that the rates on the interstate traffic must conform to that standard. That is equally the case with shipments from the State of Missouri into the stockyards at Kansas City. The same applies to a large extent with respect to grain.

Innumerable instances can be picked out to illustrate the same situation around the Great Lakes.

Now, take the shipments to the Gulf ports, notably Galveston. The great State of Texas receives a large part of its supply of manufactured articles, goods, wares, and merchandise originating in Atlantic seaboard territory, either at the factories located at the ports or at the interior points from which the shipments are made through the ports, and thence carried to Galveston by water. If it is through movement or through shipment it is, of course, interstate traffic and the State rates can not affect it, but that does not and can not eliminate the State rates from being a great factor and equalizer against unreasonable exactions that may be made by all railroad routes from centers of manufacture of the same articles in the north and east, because anyone may establish his place of business and warehouse at Galveston, and receive and unload the shipments into his store or warehouse and thereafter sell and ship the same to any point in Texas upon the State rate. The result of the transaction is that the merchant at the interior point receives his goods which have paid the two transportation charges, namely, the cost to reach Galveston, plus the outbound cost to the interior. The same thing precisely will apply with respect to all Gulf ports and with respect to the Pacific coast.

So long as this power exists in the State to regulate the amounts of rates and character of service within the State which its people will patronize if more advantageous than the interstate rates, just so long will it be beyond the power of the railroads or any regional commission, or the Interstate Commerce Commission, to do what

might be accomplished, as anyone can readily see, with the power of the States revoked.

The machinery, therefore, which Mr. Thom states should be perfected by this committee to readily and adequately respond to a condition which, as he states, in the public interest will require an addition to "our revenues," involves the destruction of the safety appliance of the State rates to prevent the increase in revenues which are sought, unless it shall be just and reasonable in the eyes of the law, having due regard for the interests of the carriers, shippers, and the public.

#### VI. THE PERFECTION OF THE MACHINERY OF REGULATION WHICH IS NEEDED.

During the past 50 years of railroad regulation, beginning with the States and coming down to the more recent regulation by the Government, has not resulted in the accumulation of facts by which it can be determined with any degree of certainty or reasonable approximation what it costs to perform a given service, or the units of service, or the resultant profits which, of course, are ascertainable only by deducting from the earnings the cost of the service. We seem to have proceeded not much further than to take the aggregate business of the railroads and deduct from that all the aggregate of its operating expenses. In that the shipper is not so much concerned as he is to know what profit his particular business is yielding to the railroad for the service. We have undertaken the task of ascertaining the value of the property of the railroads, but it is perfectly impossible to undertake to fix specific rates upon the value of the property, although the ascertainment of that value is important in order to determine the rate of return which the net earnings, as a whole, produce. But one engaged in the business of producing the traffic from which the earnings are obtained, who pays for each service the amount prescribed by the tariff without knowing what profit it is to the carrier, and with singular confession the carriers themselves declare that the ascertainment of the amount of profit is impossible, is anxious to know what his business pays the railroad for the service which it renders. If the amount of profits are not ascertainable, as has often been testified to before the Interstate Commerce Commission, it is difficult to see what basis can be established for the advance of a given rate, we will say, on cattle from the western plains to the central markets.

Time and space prevent us from going into an analysis to show that by requiring the proper accounts to be kept by the railroads for a period of time sufficient to reflect an average condition the approximate cost for the units of service upon the units of traffic is ascertainable.

As a notable example of the only extensive effort to ascertain this cost, and to give application to it in the shipment of cattle, we refer to the decision of the special master in chancery, Hon. James A. Seddon, appointed by the United States circuit court of St. Louis to hear and report the evidence in the case of the Missouri, Kansas & Texas Railroad et al. v. The Interstate Commerce Commission and to make his findings and conclusions with respect thereto. The suit was brought by the railroads to set aside an order of the Interstate Commerce Commission in the cattle raisers' case, No. 732, —, reported

in 11 I. C. C., —, and in 13 I. C. C., —, wherein the Interstate Commerce Commission held that certain advances made in the rates on cattle from the Southwestern States to the central markets were unjust and unreasonable and prescribed the rates to be charged, the contention of the railroads being that the rates prescribed by the commission were not compensatory and were therefore in violation of their constitutional rights. A long period of time was consumed in the trial and hearing of the case before the master, and his report was made to the court and confirmed, three judges sitting, namely, Van Devanter, Sanborn, and Adams.

The master found the specific profits on defined and certain shipments of cattle from points in Oklahoma and Texas to points in Kansas City and Chicago, covering a period of three years, for each of the years. This involved great labor, most of which would have been unnecessary had the accounts been kept by the railroads to show in a systematic and tabulated form the facts which were deduced from their various records, not systematized or summarized for the purpose.

It happens that the Santa Fe Railroad has a system of dividing between freight and passenger expenses upon the railroad as a whole and upon each and every division, both main and branch lines, separately and in the aggregate, and then of proportioning to each division of the road that part of the expense attributable to the freight traffic by each of the items of expense required to be kept by the Interstate Commerce Commission; and also a systematized table showing the costs of the performance of the service, not, of course, the cost on each particular commodity, but the cost per ton per mile of each element of the service, in simple but extensive detail. They also keep a classified commodity statement which shows the tons, the ton-miles, the net tons, and the gross tons hauled and the average distance of the haul, and the unit earnings per ton and per ton-mile, separately for each of the principal commodities comprising their traffic in carloads and the aggregate of all less than carload traffic.

Those compilations were extensively used, and as the conditions were admitted to have been substantially the same on several of the principal lines operating in the same territory the use of these data was made for the purpose of approximating the cost of the performance of the units of service. If knowledge of this character were developed and open to observation and use, it would be of great value. It would be far beyond the value of the principal statistics now kept, which are mainly financial.

Should the committee desire it, the detail of the method that was employed to ascertain the profits per carload of transportation of cattle, as shown by the decision of this case, can be laid before it in order that it should serve as a basis, if it deem it proper to do so, to investigate whether the ascertainment of such facts would not be of vast interest and benefit in solving the problems that must necessarily arise respecting the amount of the rates as related to the service.

Another thing is that a great deal of the expenditures of the railroads are in the nature of overhead expenditures, which do not constantly fluctuate to a considerable extent with the volume of the traffic.

Again, it is of very great importance that consideration should be given to the question as to whether given commodities should pay ratably in proportion to the weight or proportionment of the value of the commodity as well as to the value of the service. Any system of rates which proposes to charge to the local shipment of a half hundred pounds of freight, say for 25 miles, as correct a proportion of the expense of maintaining the large terminals and depots at great centers as would be paid by a shipper whose traffic moves 500 miles from the same depot and terminal facilities is wrong in principle and deprives the local shipper of the opportunity to use the railroad at all in many cases, because he can haul his freight cheaper by wagon or automobile truck. If this committee will investigate it, it will find that a vast amount of traffic, on account of the high rates charged, is being hauled by automobile trucks. The shipper has the right to employ the facilities of the railroad company, which is a common carrier, and the value of that service to the shipper must be an important item. Of course, the railroad company can not long charge more than the value of the service in such cases on short-distance movement of a great many articles and commodities of daily use if the rates are higher than the shipper is required to pay to haul it by automobile truck or by wagon.

All of these matters are mentioned, in part at least, to show that the local regulation and control of such transportation by the States through their commissions, which are daily associated and constantly in contact with these conditions, is the better plan.

VII. PROPOSAL TO CREATE POSITION OF SPECIAL EXAMINERS AND FIX SALARIES AND REQUIRE REPORTS IN WRITING IN CASES HEARD BY THEM.

The commission is compelled to have the testimony taken before the examiners which they employ for that purpose principally. Naturally it is very important that the commission have the services of these examiners to report the case to it, which oftentimes requires a vast amount of testimony. It is conceded that it is impossible for the commission to read it. The examiners, therefore, necessarily must be called upon to report their conclusions from the facts in some form, and we think that the examiners ought to owe a responsibility direct to the public as well as to the commission, and that salaries sufficiently large to attract the very best talent selected from the various localities, on account of their qualifications and experience, so far as possible, should be provided for. We also think that when such an examiner, acting in the nature of a master in chancery, hears the testimony and makes his report upon the case, such report should be printed and furnished to the opposing parties in the case and to the commission, in order that objections may be made by any party to the case to any finding of fact or conclusion of the examiner, and present it to him; and in that way to eliminate as far as possible all controverted points. Then let the case go to the commission upon the report of the examiner and the record submitted. With a sufficient number of examiners to give careful consideration to these important cases which they hear, and the making of a report with respect to the same, cases will be disposed of much more speedily and the commission will be greatly relieved from the detail work now imposed upon it. This proposition applies equally whether the commission is in-

creased to nine members and divided into sections. This proposition, we believe, will meet the approval of the commission, and the consensus of opinion among the most capable examiners which the commission has. Likewise, it will develop the extent of the capability of men appointed to that service by what is reflected in their reports.

This matter is here called to the attention of this committee because it has been extensively discussed among those who professionally and otherwise have cases before the commission. Doubtless the commission would hesitate, without congressional action, to enter upon the employment of a sufficient number of men and pay salaries high enough to compensate for such class of service, but will probably be glad to do it if Congress so directs.

#### VII. CONCLUSION.

We have to thank the committee for the opportunity of presenting at this time what has been here submitted. The interests represented in presenting these views represent the actual shipment of perhaps one and one-half million or two million carloads annually of live stock and feed products incident to carrying on their business, scattered throughout the principal live-stock producing sections of the United States. And whether or not they may be right with respect to these views, their business and situation are entitled to the greatest consideration of this committee. We believe it can not be gainsaid that the industries represented, as well as the agricultural interests of the country ought to be most benefited by the retention of the right on the part of the State to regulate the local State business.

It is true, of course, as hereinbefore expressed, that rates must vary according to circumstances and that they will be different in different States and that uniformity is impossible, but we insist that no system of rates which adjust themselves to the local circumstances and conditions can possibly be uniform, either with respect to the amount of rates or the profitableness of the transaction. We insist that upon proper analysis of the entire commercial producing business of the country it will not appear to the public interest to enter upon any such plan as that which has been proposed by the railroads and seconded by certain organizations and individuals, none of whom have a monopoly of wisdom, even if they are disinterested.

The bulwark of safety in regulation and the protection of the small shipper rests with the State commissions. The standard to which all others are secondary is one of reasonableness.

The duty of the Government and of the States is to perfect the regulating machinery which has been established or which may be established to insure as nearly as practicable the rights of the shippers and the railroads under this standard, always bearing in mind, of course, the public interest in the progressive development of the country along with the facilities of transportation. Let us rest with the machinery we have and perfect it and add to it as conditions may require.

Respectfully submitted.

NATIONAL LIVE STOCK SHIPPERS' PROTECTIVE LEAGUE,  
AMERICAN NATIONAL LIVE STOCK ASSOCIATION,  
S. H. COWAN, *Attorney*.

# INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT CONTROL AND REGULATION.

MONDAY, MARCH 19, 1917.

UNITED STATES SENATE,  
JOINT SUBCOMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The joint subcommittee met at 10.40 o'clock a. m., pursuant to call of the chairman, Senator Francis G. Newlands presiding; also Vice Chairman William C. Adamson.

The CHAIRMAN. The committee will come to order. Mr. Thom, are you ready to proceed?

Mr. THOM. Yes, Mr. Chairman; I am here ready to subject myself to any further cross-examination that may be desired.

Mr. ADAMSON. I move that the cross-examination of Mr. Thom be deferred until the absent Senators return, and that we proceed with another witness at this time.

Mr. THOM. I was going to say I will be here at all times, subject to the order of the committee. Some of the railroad executives have arranged to come, and they may have placed upon them very emergent obligations on account of this national crisis, and I should like for them to be free to perform those duties at the earliest possible time, whereas I shall have no duties imposed on me in that connection and will be here at all times subject to the order of the committee.

The CHAIRMAN. If there is no objection by any members of the committee, that will be the order. Mr. Thom, who of the railway executives are ready to appear?

Mr. THOM. Judge Lovett will appear now. He is in the room. Mr. Krutchnitt will be here to-morrow and will appear at that time.

The CHAIRMAN. Judge Lovett, we will hear you now.

Mr. SIMS. Is Judge Lovett going to cover all portions of the resolution, so far as affects railways?

Mr. THOM. You had better ask Judge Lovett that question. I do not know whether he will, unless you ask the questions. I want to express this wish, that the committee be very liberal in asking these railway executives questions, because I think that will bring out a great many aspects of the case impossible to reach otherwise.

Mr. ADAMSON. You do not think it wise to vary our rule of procedure as formerly adopted, do you?

Mr. THOM. No; I think they ought to complete their statements and then proceed to answer inquiries of members of the committee on cross-examination.

The CHAIRMAN. Judge Lovett, you may proceed.

**STATEMENT OF R. S. LOVETT, CHAIRMAN EXECUTIVE COMMITTEE, UNION PACIFIC, NEW YORK CITY.**

Mr. LOVETT. I was requested, Mr. Chairman, and I understood, at the suggestion of the chairman, to submit in connection with my statement a map showing the lines of the railroad with which I am connected. I got that word only yesterday, so I had no map except one that is taken from the annual report of the Union Pacific system. I submit that, if it will be of any interest.

The CHAIRMAN. Could you have an outline map presented that could be published in the hearings in connection with your remarks?

Mr. LOVETT. Yes. It would take a few days, of course.

The CHAIRMAN. Certainly; you may take your time for that.

(Note: This map is printed on page 826.)

Mr. ADAMSON. I would suggest to Judge Lovett that, either now or when he submits that abbreviated map, he also make a statement, so we shall be able to understand the map in connection with it.

Mr. LOVETT. Yes; I will attach to it an explanatory statement.

Mr. HAMILTON. Can that map [referring to a large wall map] be put somewhere so we can see it?

Mr. ESCH. Would the lines in red, Chicago west to the coast, indicate in a general way the system that you represent?

Mr. LOVETT. Yes. I can describe it now generally.

Mr. HAMILTON. That would be sufficient then.

Mr. LOVETT. The eastern termini of the Union Pacific are Omaha and Kansas City; it extends westward from those two points—the main line through Cheyenne, Wyo., to Ogden, Utah. The Kansas City line extends westerly from Kansas City to Denver, Colo., thence to Cheyenne, where it joins the main line. It has various branches in Nebraska, Kansas, Colorado, and some in Wyoming. The Union Pacific owns all the stock of the Oregon Short Line, which extends north from Salt Lake City by way of Ogden to Butte, Mont., and northwesterly from Granger, a point not shown on that map, but about 125 miles east of Ogden northwesterly, crossing the Salt Lake City and Butte Line at Pocatello, Idaho, and thence continuing northwesterly to the Oregon-Idaho boundary at Huntington; thence across Oregon to Portland, and from Portland to Tacoma and Seattle, Wash., with lines extending from a connection with the line just described to Spokane, Wash., and with a great many branches in Oregon and Washington.

The lines in Oregon and Washington are owned by the Oregon-Washington Railroad & Navigation Co., all the stock of which is owned by the Oregon Short Line, and all of the stock of the Oregon Short Line is, in turn, owned by the Union Pacific Railroad Co. So there are three separate corporations owning the railroads constituting the Union Pacific system, but the ownership is all practically the same through the stock ownership which I have just described. Each of the three companies, however, operates its own railroads, all, however, under one common control and management.

The Union Pacific also owns exactly 50 per cent of the stock of the Los Angeles & Salt Lake Railroad Co., which owns a line connecting with the Oregon Short Line at Salt Lake City, thence southwesterly to Los Angeles, Cal., and to San Pedro Port at Los Angeles. Ex-Senator W. A. Clark owns the other half of that road. That is not

under the same management and control as the other lines, but is a joint management by common consent, unanimous consent of the stockholding interests, Senator Clark, and the Union Pacific interests. That is, in a general way, a description of the main lines.

The red line shown there from Ogden to San Francisco is owned by the Central Pacific Railway Co., all of the stock of which is owned by the Southern Pacific Co., and the line is operated by the Southern Pacific Co. under lease. Ogden is the western terminus of the Union Pacific.

The CHAIRMAN. I wish to state to the committee that the outline map on the wall is a map that was drawn up under my direction many years ago for the purpose of showing railway systems approximating 80,000 miles of line, arranged in accordance with economic conditions to form four coast-to-coast systems under a national incorporation act, and the first large corporation embraced the New York Central lines, the Chicago Great Western Railway, and the Northern Pacific Railway, 19,000 miles. The second great transcontinental system embraced the Pennsylvania system, the Chicago & Northwestern Railway, the Union Pacific system, the Central Pacific system, the Oregon Short Line, the Oregon Railroad & Navigation Co., and the San Pedro, Los Angeles & Salt Lake Railroad, 28,700 miles. The third great system embraced the Baltimore & Ohio system and the Santa Fe system, 13,000 miles, and the fourth system embraced the Southern Railway system and the Southern Pacific system, 16,000 miles.

I wish to state that that embraced simply my empirical view at the time as to what would be a feasible transcontinental system, but I have since changed my view regarding the Central Pacific and the Salt Lake & Los Angeles Railroad. I doubt whether they shall be incorporated in a system with the Pennsylvania system. It is merely an illustration of what could be done under a national incorporation act, and the bill under which that suggestion was made was a bill introduced by me about 10 or 12 years ago.

I have also here a map showing the waterway systems of the United States, showing in red the parts that are navigable and in blue the parts that are unnavigable of the various rivers of the United States. I shall have occasion, in examination of witnesses in reference to the importance of coordinating rail and water transportation, to draw out from the witnesses their views regarding the perfecting of our rivers as instrumentalities of transportation.

Mr. ADAMSON. In connection with your statement it may be consoling to reflect that if the chairman's empirical views never prevailed, the map may yet be useful as showing the democratic system of operating railroads, and I do hope we will make the unnavigable part of those rivers navigable by the time your empirical views prevail.

The CHAIRMAN. I will add to that statement by saying that it is a question in my mind as to whether the incorporation should embrace great transcontinental systems; but as a matter of economical development of the railroad system of the country we find that these great systems are confined to sections and do not reach from ocean to ocean or from the Lakes to the Gulf, and that practically the consolidations that have been effected have been sectional in character rather than continental in character.

Mr. ADAMSON. I do not think the chairman ought to encounter any trouble about that. If you are going to consolidate, go ahead and consolidate, and have no variety or local interests at all.

Mr. ESCH. Let us proceed, Mr. Chairman.

Mr. SIMS. Is this to be a part of Judge Lovett's hearing?

Mr. LOVETT. The morning papers, Mr. Chairman and gentlemen, show that we have just emerged from a situation that emphasizes more than I can the necessity for some form of nationalizing or controlling by a national interest the railroads of this country, and I shall comment upon that situation and offer some suggestions as to methods of dealing with it before I conclude; but it is very evident, to my mind at least, that from the recent events some measures must be taken if this country is to develop and is to escape very great dangers.

I should like to state at the outset that I am not here to plead the case of the Union Pacific. As a matter of fact, that company's credit has been so high that it has had no difficulty in raising the money it needed during the last 10 years, and its present resources are such that I do not apprehend difficulty in providing the funds it may require for several years to come. Furthermore, it has been less harassed by conflicting State laws and commission regulations than many other companies. The State of Utah, by which it was incorporated, has had no railroad commission at all, nor has it created any tribunal to supervise the issue of railroad securities. It created a commission only this month, but without any power over securities. The Union Pacific system operates in 11 States, but only 3 of these—Missouri, Nebraska, and Kansas—have commissions charged with the regulation of railroad securities, and this power is comparatively recent, having been conferred upon the Missouri commission in 1913 and in Kansas and Nebraska only in 1909; and we have not sold any securities of our own issue during the last five years.

But addressing myself to the railroad situation of the country generally, as I have observed it, I believe that the problems are:

First. The multiplicity of regulations by the several States with respect to the issue of securities, involving delays, and conflicting State policies, generally dangerous and possibly disastrous.

Second. The State regulation of rates in such manner as to unduly reduce revenues, to discriminate in favor of localities and shippers within its own borders as against localities and shippers in other States, and to disturb and disarrange the structure of interstate rates.

Third. The inability of the Interstate Commerce Commission, whoever the commissioners may be, to perform the vast duties devolving upon the commission under existing law, resulting in delay—which should never occur in commercial matters—and compelling the commissioners to accept the conclusions of their employees as final in deciding matters of great importance to the commercial and railroad interests of the country.

Fourth. The practical legality that has been accorded conspiracies to tie up and suspend the operation of the railroads of the country by strikes and violence and the absence of any law to compel the settlement of such disputes by arbitration, or other judicial means, like all other issues between citizens in civilized States are to be settled.

Fifth. The phenomenal increase in the taxation of railroads in recent years.

Sixth. The cumulative effect of these conditions upon the investing public, to which railroad companies must look for the capital necessary to continue developments.

Before discussing these in detail perhaps I should refer to the amount of new capital necessary to continue the ordinary development of railroad facilities. Of course, no one knows the amount of money that will be required for proper railroad development in the future. Various opinions have been expressed from time to time, but the basis therefor was not given. The expenditures during the past 10 years may be of some value in estimating what should be spent during the next 10 years. My conviction is that the amount should not be less; and I believe it ought to be a great deal more. The amount expended for betterments, additions, and construction as far back as 10 years is not obtainable from the published reports of the Interstate Commerce Commission. It is shown for the years since 1912, but not as far back as 10 years.

The best approximation obtainable for previous years is from the "Property investment account," as shown in annual reports of the railroads to the Interstate Commerce Commission; but in the early days of railroad accounting this account in some instances included the amount of securities issued at par value, regardless of cash actually expended. In recent years, however—particularly since July 1, 1909—the additions to the property investment account each year represent not less than the money actually expended for additions, betterments (including equipment), and construction, except in the comparatively few cases of receivership and reorganization occurring during that period, as to which there is some uncertainty. Taking, therefore, the property investment account as compiled from carriers' reports to the Interstate Commerce Commission for the last 10 years, representing the percentage of mileage indicated, the following appears:

Year ended June 30—	Total.	Increase.	Per cent of mileage.
1906.....	\$12,420,287,938	\$468,938,989	92.85
1907.....	13,030,344,328	610,056,390	91.67
1908.....	13,532,744,773	502,400,445	91.65
1909.....	13,930,420,742	397,675,969	93.63
1910.....	14,560,543,744	630,123,002	94.13
1911.....	15,793,477,337	1,232,933,593	95.44
1912.....	16,486,654,661	696,177,324	96.60
1913.....	17,070,028,581	583,373,920	96.73
1914.....	17,648,816,951	578,788,370	97.03
1915.....	17,862,416,550	213,599,599	96.76

Total increase in 10 years.....	\$5,911,067,601
Average per year.....	591,106,760

Please note the drop in capital expenditures in 1915, due undoubtedly to the panicky conditions of the first year of the European war. Please note, also, the comparatively small amount expended during the fiscal year ended June 30, 1909, due probably to the panic of 1907, the effect of which upon expenditures for new improvements would naturally extend over a year or two. New im-

provements had been resumed and were well under way during 1910 and 1911, when prosperity had returned, as shown by the very large expenditures during the fiscal year ended June 30, 1911.

As already said, the above figures shown in the column headed "Increase" can not be accepted as showing exactly the amount expended in each year for additions, betterments (including equipment), and construction. But I do believe that, considering the large amounts involved, it is as reliable as any data available without going back and analyzing separately for 10 years the accounts of each railroad company of the United States, which would be an almost endless task. At all events, it seems clear that such expenditures in the 10 years mentioned averaged about \$600,000,000 per annum.

Now, I feel entirely safe in saying that more new capital should be spent on the railroads of this country during the next 10 years than was spent during the last 10 years. A railroad is never finished. It is not only being constantly rebuilt, but every time any element is renewed, it is renewed in a larger and stronger and better form. The most important improvements, however, are in the nature of additions—additional tracks, more sidings, more and larger yards, improved terminals, more engine terminals and shops to care for the increased number of engines and cars, and more main tracks.

A few years ago double tracks were unusual. Now they are quite common. Four-track and six-track railroads are numerous. If we provide adequate transportation for the rapidly growing products and commerce of this country, almost every main line will have to be double tracked in the next 10 or 15 years; and four tracks and six tracks will be as common as double tracks were 10 years ago. Is it not, in the circumstances, conservative to say that, as we spent an average of \$600,000,000 per annum during the last 10 years, we shall require a great deal more than that during the next? This takes no account of the outstanding bonds which are beginning to mature and will have to be paid off through refunding. I have no figures giving the exact amount of these maturing bonds, but those who have made some investigation estimate the amount at upward of \$200,000,000 per annum, which in forecasting the future will have to be added to the amount required for betterments, additions (including equipment), and construction.

In support of my opinion that the railroads ought to spend more new capital than was spent during the last 10 years, I beg leave to cite particularly the case of the Union Pacific, with which I am most intimately connected. When, in August, 1906, a little over 10 years ago, that company began the payment of dividends at the rate of 10 per cent per annum, it was very generally regarded as a thoroughly rehabilitated and completed property. For several years attention had been attracted to it by the enormous sums of new capital that had been poured into it under Mr. Harriman's administration. Mr. Harriman died in September, 1909, but his active administration of the property ceased on account of ill-health several months before his death. Now, notwithstanding the notable constructive work planned by Mr. Harriman's genius and carried on under his administration, and notwithstanding the very general impression throughout the country that he had completely rehabilitated the Union Pacific, the fact is that more money has been spent by the Union Pacific

system for additions and betterments (including equipment) and construction, in the 7 years since Mr. Harriman's death than during the entire 12 years of his administration. This is shown by the following table taken from the annual reports to the stockholders and from reports of the constituent companies to the Interstate Commerce Commission, viz:

## UNDER MR. HARRIMAN'S ADMINISTRATION.

Year ended June 30—	Additions and betterments (including equipment).	Double track.	New lines.	Total.
1899.....	\$2,645,423	.....	\$1,382,311	\$4,027,734
1900.....	8,890,035	883,770	1,912,909	10,890,314
1901.....	11,824,225	204,505	627,083	12,715,813
1902.....	5,306,741	.....	1,130,598	6,437,337
1903.....	5,738,338	358,750	356,336	6,453,924
1904.....	2,698,504	716,407	127,134	3,542,045
1905.....	2,158,081	321,104	1,624,495	4,103,680
1906.....	4,305,318	1,432,321	5,153,904	10,891,443
1907.....	5,277,599	2,789,126	12,670,989	20,716,714
1908.....	10,990,023	1,800,645	9,551,399	22,351,067
1909.....	3,916,900	1,932,938	11,172,582	17,022,420
Total.....	63,764,267	9,678,566	45,709,638	119,152,471

## SINCE MR. HARRIMAN'S DEATH.

1910.....	\$7,963,467	\$4,985,228	\$18,361,161	\$31,309,856
1911.....	16,504,377	3,693,256	17,154,948	37,352,581
1912.....	4,708,108	2,017,204	12,982,718	19,708,030
1913.....	5,489,503	1,450,270	9,549,254	16,489,027
1914.....	16,571,670	1,160,541	5,179,736	22,911,947
1915.....	21,088,470	363,543	2,847,915	24,299,928
1916.....	3,911,797	932,932	1,110,865	5,955,594
Total.....	76,237,392	14,602,974	67,186,597	158,026,963

I may add that the budget for 1917, prepared by our operating officers, and recently approved by me, calls for larger expenditures upon the railroads in 1917 than (excluding new lines) we have made in any one of the past 10 years. It appropriates about \$35,000,000.

What is true of the Union Pacific with respect to the need of expenditures is largely true of every enterprising railroad system in the country—particularly in the newer sections; and the question is how and from whom is the money to be gotten? That question under Government regulation is quite as much for the Government as for the railroad officers.

At the moment the railroads are prosperous. The year 1916 was the most prosperous as respects gross revenue in the history of the railroads in this country; and 1917 is beginning well. But we all know this was due to the abnormal conditions now existing in the world and that in time—whether one, two, or three years—the railroads will get back to where they were in 1914; and, unless a wise system of national regulation is adopted, their position will become much worse than then. Even at the present time they are feeling severely the “high cost of living” falling upon everyone. For example, the Union Pacific bought Mikado engines in 1913 for \$23,600; in 1916 the same engines cost \$35,800; and in February, 1917, the same engines cost \$44,000. Passenger engines bought in 1913 cost \$23,000,

while the same engines bought in February of this year cost \$41,000. Switch engines that cost \$14,000 in 1913 cost \$26,000 in 1917. These prices are, of course, abnormal, and we have bought only what we were compelled to buy; but they are no more abnormal than our large earnings during the same period.

I mention these circumstances only to show that the railroad problem is no wise solved by the present apparent prosperity, but that, on the contrary, it is time to consider and devise a sound solution of the difficulties which otherwise will soon confront us in even more acute form.

Taking up now the first of the difficulties I mentioned, namely, the multiplicity of regulations by the several States, I wish to direct your attention to the fact that this country is only beginning to feel the effect of the multiplicity of regulations by the several States with respect to the issue of railroad securities. State railroad commissions with power to regulate the issue of securities and control the financing of railroad companies became numerous only within recent years. Ten years ago only two commissions had that power—Massachusetts and Texas. Nineteen States now have it. In Illinois, Maine, Missouri, and Pennsylvania it was conferred only in 1913; in Arizona, in 1912; in California, New Hampshire, New Jersey, and Ohio, in 1911; in Maryland, in 1910; in Kansas, Michigan, and Nebraska, in 1909; in Vermont, in 1908; and in Georgia, New York, and Wisconsin in 1907. So this power is new. The great trunk lines in the East—Baltimore & Ohio, Erie, New York Central, Pennsylvania, and others in that territory—were not subject to it at all 10 years ago, but to-day they must get the consent of not less than six State railroad commissions before they can issue any stock or sell any bonds to raise money; and such consent is given in most, if not all of them, only after application, notice, hearing, and deliberation by the commission that sometimes makes ordinary court procedure seem like speeding. In Union Pacific territory only three States—Missouri, Kansas, and Nebraska—have had the power. It was conferred upon the Colorado Commission in 1913, but was annulled by a referendum election in 1914. The commissions in the other States—Wyoming, Idaho, Oregon, and Washington—have not yet been given the power. Utah has had no railroad commission until this month, and it has no power to regulate securities. In the South, Georgia and Texas are apparently the only States exercising the power. Since the fashion has started, it is not at all improbable that all the States will soon follow it.

I direct your attention to the rapid and radical growth of State regulation in the section lying north of the Potomac and Ohio Rivers and bounded on the west by the State of Illinois and on the east by New York, constituting the heart of the manufacturing, commercial, and financial interests of the country. Ten years ago there were no restrictions upon railroad financing. Then, in 1907, New York commenced; then Michigan in 1909; Maryland in 1910; New Jersey and Ohio in 1911; and Pennsylvania and Illinois not until 1913. And now all the great trunk lines of railroad in that territory must apply to four or five, and, if they enter all the States in that section, as some of them do, to as many as seven different State railroad commissions, by formal petition, produce witnesses, have a hearing, and satisfy the varying views of the many commissioners, influenced perhaps in many

cases by purely local, rather than national, considerations, before they can issue bonds or borrow money. Aside from the inevitable delay incident to such a number of different proceedings, and time necessary to enable the various commissioners to make up their minds, and perhaps write opinions, the whole plan can be defeated by any one State commission refusing to give its consent. It is really not surprising that the sudden shackling in this manner of these great trunk lines, whose securities are in the hands of almost every investor, great and small, should have made a profound impression upon the railroad-investing world. The increasing activity of these commissions, as they feel more and more their power, and the conferring of the power upon commissions in other States will add to the difficulties, unless Congress exercises its right to exclusively regulate the capitalization and financial operations of these interstate railroads.

In this connection I should like to emphasize the importance of time in transactions involving the sale of corporate securities. Bankers are almost indispensable in floating large issues; but bankers never buy such securities to keep—only to sell. Their function is precisely that of the ordinary merchant, except that they count on making quicker sales, and therefore work on a smaller margin of profit, than the ordinary merchant makes of his merchandise. When bankers make an offer for an issue of bonds or stock they base their price upon current financial conditions and quotations, expecting to make a quick turnover. If they are required to wait for the delivery of the securities, they reduce the price to cover the risks of financial changes in the meantime, and the seller gets less for his securities. If the period of waiting is long or indefinite and the transaction is a large one, bankers sometimes will not buy at all—particularly if the financial world has any menacing features. But in any case, the longer the delay the lower the price, because of the greater risk. Jacob H. Schiff once said to me, "Peace never breaks out overnight, but war sometimes does." I afterwards saw that remark verified in 1914. Financial disturbances usually come suddenly; improvement always gradually. Bankers, therefore, are afraid to commit themselves for the purchase of a large amount of securities for delivery weeks or an indefinite time later, and any syndicate formed to take and carry them in the meantime must be paid well for the risk.

I remember that in 1907 the Union Pacific made an issue of about \$75,000,000 of its convertible bonds, but because they were convertible it had to offer them first to its stockholders. I believed that the bonds were so attractive that the stockholders would take all of them, and being a member of the executive committee and of the board, as well as counsel for the company, I told Mr. Harriman I did not think we should have the issue underwritten, since the bankers wanted  $2\frac{1}{2}$  per cent for the underwriting. Mr. Harriman said that he himself thought the stockholders would take the bonds, but since the company needed the money, and, indeed, must have it, he felt that it was wise to pay the underwriting price as a premium to insure the money. It was necessary to have a special stockholders' meeting to authorize the increase in the capital required to provide for conversion of the bonds. This took several weeks. In the meantime the panic of 1907 developed, and the stockholders took less than \$5,000,000 of the bonds, and the underwriting syndicate had to take the balance of about \$70,000,000, and at a time when call money in New York

was dancing between 10 per cent and 500 per cent per annum. But through Mr. Harriman's wise foresight the Union Pacific got the money. I had not seen as much of large financial operations then as I have since. That experience and my observations since have convinced me that if bankers are an evil they are, like lawyers, a very necessary one.

I relate this incident to illustrate the importance of prompt dealing in large financial transactions. If a railroad company is compelled to go to half a dozen or more State railroad commissions for permission to make an issue of stock or bonds, and encounter delays running from weeks to months on account of numerous hearings before different commissions, and meet their conflicting policies and views, before it can deliver the securities, it will be impossible to have the issue underwritten, or if underwritten at all the cost will be enormous. But worse still, the chances are that differences between the commissions will arise, or that the inexperience and perhaps the financial theories of some of the many commissioners may require changes that will offset the plan entirely.

In the meantime, with public knowledge of the fact that the issue is to be brought out, and with no bankers or syndicate to protect it against raids, ample opportunity will be afforded for depressing the securities on the market by the time they are issued.

It is true, of course, that some delay and publicity will attend any commission regulation of the issue of securities. But it is obvious that if supervision of only one commission is required the delay will be far less, and that commission, with the greater experience it will have in dealing with such subjects, will acquire an expertness and familiarity with all conditions involved that will not only greatly expedite the proceedings but enormously increase the efficiency and wisdom of the supervision.

The difficulties are not merely potential, they are actual; and with the increasing number and power of State commissions the difficulties of financing railroad improvements will become insuperable. Mr. Thom told you of the predicament of the new management of the New Haven Road because of the conflicting laws of Massachusetts, Rhode Island, and Connecticut; and of the New York Central having to pay the State of Illinois a fee of \$600,000 for an issue of securities on its line from New York to Chicago, although but a few miles of the railroad lies in the State of Illinois. The Union Pacific, for the privilege of issuing some bonds under a mortgage covering its lines extending from the Missouri River to Ogden, with only a few hundred feet of track in Missouri, at Kansas City, had to pay recently to the State of Missouri for the approval of such issue by the Missouri commission a fee of \$10,962, when only \$124,930 of the money represented by the bonds had been expended upon its property in that State.

Indeed, some States, in effect, deny railroad companies the right to borrow money for improvement at all. As attorney, and afterwards as president of the Southern Pacific lines in Texas, I had to do and was quite familiar with the working of the Texas law regulating railroad stocks and bonds, from the time of its enactment in 1893 until the termination of my connection with the Southern Pacific in 1913. Without reference to branches and other subordinate lines, the Southern Pacific Sunset Route, made up of steamers from New

York to New Orleans and Galveston, thence by rail to Los Angeles, San Francisco, and Portland, runs through the State of Texas for 936 miles from the Texas-Louisiana boundary to the Rio Grande River at El Paso, with a line diverging from this at Houston and extending to Galveston. Yet under the stock and bond law of 1893, as administered by the Texas Railroad Commission, not a dollar of bonds or a share of stock has been issued against or on account of this line for the necessary betterments and additions of this great trans-continental line of railroad in Texas since the Texas statute was enacted in 1893 to this day. Even if they could have been sold for 100 cents on the dollar gold, or more, their issuance would not have been allowed.

The Gulf line of the Santa Fe, extending from a connection with the main system in Oklahoma, thence through Texas to the Gulf, is in the same situation. Not a bond or share of stock has been issued in over 20 years for the improvement of that great outlet for interstate and foreign commerce from the Northwest.

During the life of Mr. Harriman, he planned to build a low-grade line connecting with the Union Pacific at Kansas City, thence to the boundary of Texas at Denison, there connecting with the Houston & Texas line, controlled by the Southern Pacific, and practically to rebuild that line from Denison to Houston and Galveston, in order to establish a low-grade line from Kansas City to the Gulf, particularly for the transportation of wheat for export, and lumber from east Texas and Louisiana to Oklahoma, Kansas, Nebraska, etc. As counsel, I was obliged to advise him that under the Texas law and the ruling of its railroad commission, not a dollar in bonds could be issued for the money required in the reconstruction of the Houston & Texas Central; and even if stock could be issued at 100 cents on the dollar for the money thus expended, as a practical matter it could not be sold, since stock ownership was the only way by which the Houston & Texas Central could continue as a part of the Southern Pacific system, a lease or sale of the railroad itself to the Southern Pacific Co. or any foreign corporation being forbidden by the laws of Texas. The result was that a great project for improving the facilities for interstate and international commerce had to be abandoned, and the choppy grades of the Houston & Texas Central continue as they always have been, and probably always will be as long as the Texas law remains unchanged.

Senator TOWNSEND. What do you mean by low-grade railroads?

Mr. LOVETT. About five-eighths. What I mean is practically a level road.

Senator TOWNSEND. Yes; I did not quite understand what you meant.

Mr. LOVETT. Yes; it is practically a level track. The Houston & Texas Central, like most of the roads constructed in the early days, was built without much regard to grades and on the surface of the ground.

Mr. THOM. The lower the grade of the ground the higher the grade of the railroad.

Senator TOWNSEND. I did not know whether you meant that or whether you meant a cheap railroad.

Mr. LOVETT. The money needed for the improvement of the Texas lines of the Southern Pacific and Santa Fe systems, when forthcoming

ing at all, has been furnished by the parent systems by direct loan without security from their treasuries outside of the State and by foregoing dividends of the Texas companies from time to time to which they were fairly entitled. Much of the lines mentioned—more than half of the Southern Pacific from the Louisiana boundary and the Gulf to the New Mexico boundary—is unproductive and would not pay operating expenses except for the through business. No argument should be needed to show that the transcontinental lines of railroad extending from New Orleans on the Mississippi River and Galveston on the Gulf to the Pacific Ocean, and the lines from the grain fields of Oklahoma, Kansas, Missouri, Nebraska, Iowa, etc., to the Gulf—particularly those under the same stock ownership and operated as a single line—ought to be regulated, in their financial operations at least, by the Government that regulates interstate and foreign commerce.

What is true of the Southern Pacific and Santa Fe lines in Texas is true, more or less, of all the other lines in that State. Railroad construction in Texas since the enactment of the law in 1893 has been limited to building by large railroad systems operating outside the State in order to reach the Gulf or as feeders to the main system. Every case of any independent railroad construction in Texas since 1893, without a single exception which I can recall, has proven disastrous and ended in a receivership. Almost all the mileage in the State, outside of that owned by the Southern Pacific and Santa Fe, is to-day in the hands of receivers, and even the Southern Pacific and Santa Fe lines would have greatly deteriorated physically or gone into receiverships if it had not been for their strong backing.

The question naturally arises why Texas will not allow the railroads to issue securities at par for money necessary to improve their railroad facilities. The explanation is that the law of 1893 required the railroad commission to appraise the value of all existing Texas railroads and to file such appraisal, which should thereafter be the basis for issuing securities against such properties, but giving the commission full power to change such appraisal practically at its discretion. The commission proceeded in 1894, 1895, and 1896 to determine what it claimed would be the cost of reproducing the Texas railroads as they then existed, which they determined should be the basis of value. It was during a period of great business depression, as you will recall, throughout the whole country, when materials and labor were lower than they ever have been within my memory. They proceed substantially as the Interstate Commerce Commission is now proceeding, or, to state it another way, the Interstate Commerce Commission valuation department has apparently adopted the Texas commission method of valuing the railroads of the United States. The method assumes an ideal condition and the perfection of human wisdom and performance, and naturally it achieves marvelous results. For example, the Texas commission determined that the railroads of the Galveston, Harrisburg & San Antonio Railway Co., the subsidiary owning the main line of the Southern Pacific from Houston to the Rio Grande River at El Paso, was worth \$16,700 per mile, whereas afterwards, in a suit to enjoin as confiscatory rates based upon that theory, by testimony of engineers engaged in the original construction and other evidence with respect to conditions, prices, and difficulties attending the construction at the time, it was shown that

with subsequent betterments and additions the railroad had probably cost upward of \$50,000 per mile. Other instances of differences between the theory and the fact quite as striking could be cited.

Now, the commission having determined the value of the then existing Texas railroads in the depression of 1894, 1895, and 1896, found that the outstanding capitalization, of course, very greatly exceeded the value thus ascertained. Wherefore the commission decided that so long as that condition existed no more bonds could be issued, no matter how high the price received for them. True, the commission has been liberal in allowing bonds and stock to be issued for the construction of new lines, particularly if designed to compete with existing lines. And to show that such commission regulation does not prevent the imposition of worthless securities upon the public, my information is that every railroad bond issued by order of the railroad commission of Texas sooner or later went into default, except those issued by companies owned by the Southern Pacific, Santa Fe, and the El Paso & Southwestern—Phelps Dodge lines. Yet the great argument for the enactment of the law, in the expressive phrase of its author, was to take the "wind and water out of railroad bonds and stocks."

No other State, so far as I am aware, has undertaken an appraisal of the railroads as it was done in Texas. Only Congress has taken that action, and we supposed, and shall contend, that it required the Interstate Commerce Commission to take into account all elements of value, rather than the theoretical cost of reproduction, which the Texas commission took as its only guide. The conditions in Texas which I have just described do not therefore exist in any other State, so far as I am aware. The other States regulating the issue of railroad securities mostly have concerned themselves thus far only with ascertainment of the purpose for which the issue is to be made and the price to be obtained, though some of them have claimed the right to review the business judgment and wisdom of the directors in undertaking the particular improvements for which the issued is desired.

Again, the right to extend an existing system of railroads by building a new line or buying or leasing an existing line comes only from the States. Congress makes no provision therefor, although the object may be exclusively the extension and promotion of interstate and foreign commerce. Each one of the large railroad systems of the country derives its existence from some State, and that State can paralyze the development of the system in other States by imposing restrictions upon the capitalization, or otherwise, if it should choose to do so; and where the line traverses several States any one of the States can at least prevent development through raising money on mortgage bonds, if not through the issue of stock, by refusing to permit the mortgage on that portion of the system within such State. It will not do to say that the States are not likely to exercise this power. As a matter of fact, they do. I have already cited the case of Texas. That State goes further and does not allow a corporation of any other State to own or lease or operate a mile of railroad within its territory. And there are others. Several of the States will not permit the sale or lease of any part of a railroad without the approval of the State commission. Following the decision of the Supreme Court in *United States v. Union Pacific Railroad Co.* (226 U. S. Rep., 61), holding illegal the control of the Southern Pacific by the Union

Pacific, the Attorney General insisted, as a part of the dissolution procedure to be worked out in the court below, that the Southern Pacific should sell and that the Union Pacific should buy the Central Pacific Railroad extending from a connection with the Union Pacific at Ogden to San Francisco, San Jose, and Fresno, Cal., and from Roseville Junction to the Oregon boundary, which the Pacific Railroad acts of Congress aiding its construction required should, in connection with the Union Pacific, be operated, so far as the public and Government were concerned, as "one continuous line of railroad from the Missouri River to the Pacific Ocean." Under pressure from the Attorney General the Union Pacific and Southern Pacific arrived at and executed an agreement for such sale. But an essential feature of the agreement was the joint use by the two systems of certain terminals at Sacramento, Oakland, and San Francisco and the joint use of certain tracks of the Southern Pacific between Sacramento and Oakland and a lease of the Central Pacific between Tehama and the Oregon boundary to the Southern Pacific. The railroad commission act of California, however, provided that every contract for trackage or joint use of terminals or other railroad properties and for the lease or sale of railroad property was unlawful unless approved by the California commission. Application was made and, after hearing, the California commission would approve the contract only on condition, in substance, that other lines should be admitted to the joint use of such properties on such terms as the commission itself might fix, and that the rentals for the joint use of the properties should be fixed by the commission—conditions which, of course, no solvent railroad company could afford to accept. Consequently the agreement failed.

Mr. ADAMSON. Judge Lovett, not for the purpose of cross-examination at this time, which is not allowable under our ruling, but simply in order to understand you, are not those government-aided railroads chartered by the Federal Government?

Mr. LOVETT. No.

Mr. ADAMSON. None of them?

Mr. LOVETT. No. The Central Pacific was chartered by the State of California, but certain rights were conferred upon it by Congress, including Government aid, and the Supreme Court held that it was endowed by the Federal Government with certain powers.

Mr. ADAMSON. My idea was that if it was chartered by the Federal Government it would not be necessary to get this permission from the State commissions.

Mr. LOVETT. No; it was chartered by the State of California. The original Union Pacific was a Federal corporation, but was foreclosed.

Now, I do not wish to be understood as criticizing the California commission for its action in the matter just stated, or to express any opinion as to the wisdom of its action from any standpoint.

I mention it only as an instance where as able and enlightened a commission as that of the State of California prevented an otherwise lawful contract for the establishment under one management of a great national highway, and prevented the carrying out of a definite plan of two successive national administrations, as reflected by action of the Attorney General in each. Whether the result was beneficial or otherwise to the public is, of course, not for me to say. The whole

point I make is it was a matter that should be for the determination of the national authority and not for a single State.

Access to our Pacific Ocean coast from the Mexican boundary on the south to Oregon on the north, a distance of almost 1,000 miles, is through the State of California. Indeed the only accessible ports between Mexico and the mouth of the Columbia River, a stretch of 1,280 miles, are within California. Access to the Gulf of Mexico between the Mexican boundary and Louisiana is through the State of Texas, and the only practicable access to the Gulf between the mouth of the Mississippi River and Mexico, a stretch of some 670 miles, is through the Texas ports. With the California commission controlling access to most of our Pacific Ocean coast and local rates to and from the ports, and with the Texas commission controlling access to most of the Gulf coast ports and the local rates to and from those ports, it is to be expected that the commissioners of those States will be indisposed to relinquish their power over the "hinterland," and will oppose every move for the exercise by Congress of its full constitutional power over interstate and foreign commerce.

Mr. ADAMSON. Mr. Chairman, Judge Lovett has been speaking, without interruption, for almost two hours, and not being a Senator, and accustomed to long—

Mr. LOVETT. And tiresome.

The CHAIRMAN. Our custom has been to hold sessions until half past 1 and adjourn for the day.

Mr. ADAMSON. What I was going to say is, would it not be better to let him have a rest and come back at half past 1? It has been intimated that Judge Lovett might be called away, inasmuch as we are in this perilous time.

Mr. LOVETT. I am entirely at the service of the committee.

Mr. SIMS. I suggest that we continue until 1.30 to-day and then adjourn, and make up our plans for the future.

Mr. LOVETT. Shall I proceed, Mr. Chairman?

Mr. ADAMSON. I withdraw the motion, Judge Lovett.

The CHAIRMAN. Yes, proceed, Judge Lovett.

Mr. LOVETT. I believe very strongly that it is absolutely necessary for the adequate development of the railroad transportation of this country for Congress to exercise the powers vested in it by the Constitution, rather than the States, to the extent, at least, of controlling exclusively the issue and sale of securities by railroad companies, and the establishment and extension of interstate railroad systems by construction, purchase, lease, consolidation, or otherwise. The credit of such systems depends upon the cohesion of the constituent factors and the legality of the combination. Undoubtedly there should be a veto power upon the construction of unnecessary lines and upon sales, leases, and consolidations, but I submit that the power should be vested in Congress, or a congressional agency such as the Interstate Commerce Commission, and not in the States. The power which a single State now has, and sometimes exercises, to upset and defeat the extension and building up of a great railroad system serving the commerce of many States or the whole country should be abolished.

Coming now to the second difficulty I mentioned, namely, State regulation of rates in such manner as to unduly reduce revenues, to discriminate in favor of localities and shippers within the State, and disturb and disarrange the structure of interstate rates, but little need be said, since the facts are familiar. Most of you know that many of the States by legislative action or commission order have reduced passenger fares to 2 cents per mile, while interstate rates are higher, and that interstate passengers in such circumstances are able, and many of them do, by buying tickets to intermediate points, etc., travel at a lower rate than that prescribed by interstate tariffs filed with the commission. Similar discriminations are commonly practiced with respect to freight. My understanding is that at about the time the Interstate Commerce Commission granted the eastern roads an increase of rates in the early stages of the European war, as a necessary measure of relief from serious financial distress, the Pennsylvania commission ordered a reduction in coal rates involving a loss of revenue to the roads affected almost equal to the gain to result from the increased rates allowed by the Interstate Commerce Commission. But the officers of the railroads from that State can give you more explicit information as to this. Certainly it has not been unusual for States and State commissions to reduce rates while the Interstate Commerce Commission was increasing or considering applications to increase rates.

Some of the State commissions in effect control interstate rates through their power over intrastate rates and their willingness or threat to use such power to punish railroads who disregard their wishes with respect to interstate rates. The Texas Railroad Commission has for years practically controlled interstate and foreign rates to and from that vast territory. Its control over the local rates to the Gulf ports from a great interior territory enables it to force an adjustment of interstate rates throughout a very large section of the Southwest. In addition to this, that commission has long coerced the Texas railroads into adopting whatever interstate rates or whatever adjustments or differentials in interstate rates it desired, though this control received a shock in the so-called "Shreveport case." It has threatened the Texas railroads with punishment by reduction of local rates, and has made the threats good by inflicting punishment in many instances when its wishes with respect to interstate rates were disregarded. I could give you many instance in proof of this, but will not take the time, since I believe my statement will not be questioned. Indeed, the Shreveport case is a good example. In a word, it was a case where the Texas commission required the Texas railroads to maintain interstate rates sufficient to practically prevent the city of Shreveport from competing with Dallas and Houston in Texas localities much nearer Shreveport than either of the Texas cities. (*H. E. & W. T. R. Co. v. U. S.*, 234 U. S., 342.)

It may interest you in this connection to observe how small the intrastate traffic is compared with the interstate traffic. Statistics for the Union Pacific system for the fiscal year ended June 30, 1916, show the following:

## UNION PACIFIC SYSTEM.

*Freight revenue fiscal year ended June 30, 1916.*

Class of revenue.	Amount.	Per cent of total.	Class of revenue.	Amount.	Per cent of total.
Intrastate for State of—			Intrastate for State of—Continued.		
Missouri.....			Idaho.....	\$1,065,877.23	1.4
Iowa.....			Montana.....	102,169.66	.1
Nebraska.....	\$2,130,434.04	2.8	Oregon.....	1,493,195.16	2.0
Kansas.....	1,546,196.63	2.1	Washington.....	729,036.58	1.0
Colorado.....	929,116.15	1.2	Interstate.....	65,997,249.75	87.9
Wyoming.....	405,305.34	.6			
Utah.....	680,174.70	.9	Grand total.....	75,078,755.24	100.0

*Passenger revenue fiscal year ended June 30, 1916.*

Class of revenue.	Amount.	Per cent of total.	Class of revenue.	Amount.	Per cent of total.
Intrastate for State of—			Intrastate for State of—Continued.		
Missouri.....			Idaho.....	\$1,079,535.11	5.5
Iowa.....			Montana.....	122,409.10	.6
Nebraska.....	\$1,488,054.94	7.6	Oregon.....	1,061,744.83	5.4
Kansas.....	1,061,811.94	5.4	Washington.....	539,971.62	2.8
Colorado.....	444,586.33	2.3	Interstate.....	13,343,409.99	68.0
Wyoming.....	258,625.27	1.3			
Utah.....	217,060.67	1.1	Grand total.....	19,617,229.80	100.0

Our total freight revenue that year was \$75,078,755—

Mr. SIMS That is, the Union Pacific?

Mr. LOVETT. Yes, sir.

Mr. SIMS. For the whole country?

Mr. LOVETT. That is the total freight revenue of the Union Pacific system for the year ended June 30, 1916. Our interstate and foreign freight revenue was 87.9 per cent.

The CHAIRMAN. What is that last? Interstate and foreign?

Mr. LOVETT. Our total freight revenue. Of our total freight revenue 87.9 was interstate and foreign—that is to say, subject to the Interstate Commerce Commission regulation—whereas the largest intrastate revenue furnished by any one State was 2.8 per cent, while the lowest was one-tenth of 1 per cent. The percentage of intrastate passenger revenue was somewhat larger, ranging from six-tenths of 1 per cent to 7.6 per cent, while interstate passenger traffic was 68 per cent. Yet any one of the States could block the financial plans for a considerable part of this railroad system, if not for the whole, if it so willed. Happily the States traversed by our lines have been considerate and cooperative in helping us in our work of upbuilding and development.

Mr. ADAMSON. Your comparison between local and interstate rates, I presume, you mean in this way: That on an average each point, in doing business with other points, would maintain that pro rata per cent; that the business that it does with intrastate points would be only that small percentage, compared with the business it does with outside interstate points, on an average?

Mr. LOVETT. All of the business, Judge Adamson, of course, moves over the same lines.

Mr. ADAMSON. I understand.

Mr. LOVETT. And it all comes from our own stations and connections.

Mr. ADAMSON. I understand, but the general meaning of that statement would be that Philadelphia, for instance, in doing business with Pennsylvania points, would maintain on an average a small percentage as against the large percentage it would do with interstate points—points beyond the State?

Mr. LOVETT. Yes. Of course, all these stations do State as well as interstate business, but the interstate business is not subject to State regulation.

Mr. ADAMSON. I understand, but I am talking about your comparative figures—the amounts.

Mr. LOVETT. Yes, if I understand your question. We have taken here the business that has both origin and destination in the same State.

Mr. SIMS. Exclusively intrastate business?

Mr. LOVETT. Yes.

Mr. SIMS. And not where part of the haul is through one State to a point in another State?

Mr. LOVETT. No. That comes under interstate traffic.

Mr. ADAMSON. Not all in one State—intrastate?

Mr. LOVETT. Yes. These figures include every dollar that we earn—freight and passenger—and that which is not intrastate is interstate. Each station on the line probably had interstate business as well as intrastate business, and certainly some of them, if not all of them, had more interstate business than State business. But the purpose of this statement is to separate that which is subject to the jurisdiction of some particular State from that which is subject to national jurisdiction.

Mr. ADAMSON. Of course, all stations do not maintain the same proportion.

Mr. LOVETT. Oh, certainly not.

Mr. ADAMSON. Or ratio.

Mr. LOVETT. No. The point is that while 87 per cent of our freight business is interstate, and while the largest percentage of any one State under the Constitution is only 2.8 per cent of the freight business, yet any one of those States can defeat the financial operations—an issue of bonds or an issue of stock or any other important financial operation—of a considerable part of the Union Pacific system by withdrawing its consent.

Mr. SIMS. A large State, like Texas, of course has a vast interest in interstate business and a smaller one in intrastate business, on account of the smaller amount of intrastate business.

Mr. LOVETT. Yes.

Mr. SIMS. Now, from an economic standpoint, why have not the people of Texas the right to try to control that interstate rate, in which they have a larger interest and a greater burden?

Mr. LOVETT. Because of this reason—

Mr. SIMS (interposing). I am not talking about a legal right, but a moral right.

Mr. LOVETT. Certainly as far as a legal right is concerned they have no control over interstate traffic.

Mr. SIMS. I understand.

**Mr. LOVETT.** The Constitution gives that power to the Congress. So far as moral rights may be concerned, I think there is none, because Texas, once a republic, thought that she would gain sufficient advantages from becoming one of the States of the Union, to give up that right.

**Mr. SIMS.** She might have supposed that she would have been annexed anyway.

**Mr. LOVETT.** She considered that the cheapest way to get in. But, at all events, from a moral standpoint, she gave up her right to independent regulation of these matters for other considerations.

If Congress is going to perform its duties, under the Constitution to regulate interstate commerce, is it right to leave the law so that either one of these States—even one that contributes one-tenth of 1 per cent—can say whether or not an issue of a hundred million dollars of bonds or a hundred million dollars of stock, or any other amount, for the development of this important interstate highway, shall be made or not? Each State has that right to-day.

The third difficulty which I specified is the inability of the Interstate Commerce Commission, no matter who the commissioners may be, to perform the duties devolving upon the commission, under existing laws, resulting in delay—which should never occur in commercial matters—and compelling the commissioners to accept the conclusions of their employees as final in deciding matters of great importance to the commercial and railroad interests of the country. If the duties of the commission should be enlarged, if only to the extent of supervising and regulating the issue of railroad securities, the conditions will, of course, become worse, and the delay intolerable; and some provision for the relief of the commission will become absolutely necessary.

**Mr. ADAMSON.** I thought you were going to talk about the regulation of stocks and bonds. Before you leave that topic, I have a suggestion to make to you, and that is that right there, in that part of your statement, you examine the Rayburn bill which was passed by the House, and say what you can or desire to say about it; because the House agrees with you up to this point, and passed that Rayburn bill two years ago, and sent it to the Senate, and a committee of the House reported it again to the House, but I think mainly on account of this investigation, refrained from passing it again, and there are Members of the House who believe that that Rayburn bill, either in its present form or as it may be amended, if necessary, would remedy all the defects you have talked about up to this point; and I would be glad to have your views on it. Of course, I may be wrong; I do not know.

**Mr. LOVETT.** The Rayburn bill, as it originally passed the House, did not meet this, because it simply added another regulating body. It reserved the rights of the States to regulate the issuance of securities. It was amended by the Senate committee in a way that, in my judgment, made the congressional regulation exclusive.

**Mr. ADAMSON.** Do you not think that would have been true of the Rayburn bill, that the regulation would have become exclusive?

**Mr. LOVETT.** I am afraid not, Judge Adamson, because the Rayburn bill expressly provided that it should not supersede regulation by the State, according to my recollection of the terms of the original Ray-

burn bill. I propose to discuss this question of regulation and means of regulation later on.

Mr. ADAMSON. I just wanted your views about that particular bill.

Mr. LOVETT. It is my purpose to discuss the question of whether it must be done by a Federal corporation or whether Congress can regulate the performance or exercise of those functions by State corporations; and I will come to that point later, with your permission.

Mr. ADAMSON. Yes; I only wanted to direct your attention to it, in the event you had not contemplated it or reference to it.

Mr. LOVETT. The commission's statistical reports show that on June 30, 1914—the latest complete statistics available—there were 899 operating railroads in the United States, divided as follows: Of class 1, whose operating income exceeds \$1,000,000, there were 183; of class 2, whose operating income is between \$1,000,000 and \$100,000, there were 285; and of class 3, whose operating income is less than \$100,000, there were 431. This excludes switching and terminal companies, aggregating about 200; and in addition to this, there were 478 railroad corporations reporting to the commission but whose property was operated under leases by some other company included in classes 1, 2, and 3. Consider how many boards of directors, executive committees, presidents, vice presidents, general managers, and other railroad officers are engaged constantly in supervising the operations of all these railroads throughout the country. Yet the Interstate Commerce Commission is charged with the task of regulating and supervising more or less the operations of all of them. We believe that the Interstate Commerce Commission is now, and ever since its creation has been, composed of hard-working men, and that they are doing quite as much as men in such positions can do. But their task is too great. The commissioners are charged with the duty of hearing and deciding issues more important to the commerce and business of this country than are many of the cases decided by the Supreme Court of the United States. But they are dependent upon subordinates unknown to the people whose interests are involved for the hearing and recording of the testimony, which is so voluminous that it is not humanly possible for all the commissioners to read it after it is taken. Hence it must be summarized by the persons who took it or by some other clerk. Upon a record thus made and upon arguments and briefs often, I dare say, conflicting in statement, the commissioners must decide these matters of far-reaching importance to the public as well as to the railroads and perform all their other duties of supervision, detection, and correction, embracing accounting, statistics, rates, discriminations, boiler inspections, and safety appliances, with an odd job added now and then by resolution of Congress for the investigation of some transaction.

Suggestions for the relief of the commission I will defer until I shall come to a discussion of the remedies proposed by the railroad executives.

Mr. ADAMSON. Mr. Chairman, Judge Lovett has reached a good place to stop, and as we ought to go into executive session, I would suggest that we do so now.

(Whereupon, at 1.05 o'clock p. m., after informal discussion with respect to the time for meeting, the committee went into executive session, announcing that it would meet to-morrow, March 20, 1917, at 10.30 o'clock, a. m.)

## INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT CONTROL AND REGULATION.

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TUESDAY, MARCH 20, 1917.

UNITED STATES SENATE,  
JOINT SUBCOMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The committee met at 10.35 o'clock a. m., pursuant to adjournment, Hon. William C. Adamson (vice chairman) presiding.

MR. ADAMSON. The committee will come to order. Judge Lovett, are you ready to proceed?

MR. LOVETT. Yes.

### STATEMENT OF MR. R. S. LOVETT—Continued.

MR. LOVETT. I had reached yesterday, Mr. Chairman and gentlemen, the conclusion of the third of the principal difficulties that confront the railroads, according to my judgment of the situation; and I now will take up the fourth difficulty I mentioned at the outset, which is the practical legality that has been accorded conspiracies to tie up and suspend the operations of all the railroads of the country by strikes and violence and the absence of any law to compel the settlement of such disputes by arbitration or other judicial means. We have just had a striking—indeed, almost tragic—demonstration of the power of such conspiracies and of the willingness of the conspirators to use it, with utter disregard of the safety and welfare of the Nation. Upon the verge of the most serious foreign war that has ever confronted this country, the four men who head the trainmen's organizations held up the Nation by threat on short notice to paralyze not only the commerce but the defensive power of the country unless their demands were without question or inquiry or consideration conceded. They held up Congress last September, and since the Supreme Court did not "step lively" enough to suit them, they held up the country in the presence of a foreign foe. How soon they will hold it up again I do not know.

With laws which permit this, with no tribunal or agency established for inquiring and determining the justice of such demands and compelling obedience to the decision, with the railroads exposed helplessly to such exactions, is it surprising that prudent investors should hesitate to put their money into railroad properties except in those which are so strong financially that they can withstand for a time even these exactions?

However men may differ about the Sherman Act as applied to wage disputes and the abrogation by the Clayton Act of the ancient right of protection by injunction, it does not seem to me that there should be serious difference of opinion upon the proposition that no body of men should be allowed to form a conspiracy, and openly carry it out, to stop the operation of all the railroads of the United States—thus suspending all interstate and other commerce and paralyzing the very life of the Nation, no matter what their object may be. Why is a strike of trainmen called? Why do they act in concert and all quit simultaneously? Is it not for the deliberate and sole purpose of stopping the running of the railroad and suspending its traffic? If a strike is succeeding, it means that the trains are not running; and if it is failing, it means that the trains are running. The success or failure of the effort depends upon the extent to which interstate and all other commerce is suspended. It seems inconceivable that a Nation as dependent as ours is upon railroad transportation should permit this to occur. The fact that it may occur not only impairs the credit of all railroad securities, but it causes apprehension to the manufacturer, the merchant, the producer, and consumer dependent upon railroad transportation, as they all are. It seems to me that one of the plainest duties of the National Government, not merely to the railroads, but to the whole people, is to provide a means for settling disputes between the railroads and the trainmen likely to lead to such strikes. Men can not be compelled to work against their will, and no one suggests this. But men can be forbidden to enter into and carry out a conspiracy to interfere with and suspend interstate commerce. Any trainman may quit when he wishes, but if he conspires with a body of trainmen to interrupt and suspend commerce and the public business, he is in a very different position. What one man may do alone is quite different, under the ancient law of conspiracy, from what he may agree and conspire with another to do. All civilized States provide courts or other tribunals for settling disputes between citizens. The savage rule of might and force and violence and murder for the settlement of property and personal disputes between citizens is forbidden by the laws of all civilized States, and most, if not all of them, provide agencies; and we in our own country provide agencies for the peaceable settlement of all such disputes except labor disputes. Why should we stop there? Especially why do we stop with disputes between trainmen and their employers which involve more injury and disaster to the people at large, if fought out privately, than any other catastrophe that could befall us short of foreign invasion? Why should we allow such an issue to be fought out in our midst, involving the suspension of commerce, incalculable loss to innocent citizens, and suffering, if not starvation, to millions of the poor and most helpless inhabitants of cities and crowded communities? It can not be true, as some of the labor leaders claim, that this one controversy out of all that arises between men is not susceptible of peaceable adjudication, and can be settled only by violence and injury, not only to the participants in the controversy, but to all the people of the country. It would be easy to frame a law that would protect the rights and welfare of the men, as well as of the companies, while providing means for the peaceable settlement of such controversies.

I do not advocate compulsory arbitration of every labor controversy that arises in the country. In purely private employments, where only the interest of employers and employees are concerned and the public is not injured, perhaps arbitration ought to be voluntary. Even in certain branches of the railroad service I do not advocate it, although I am not at all opposed to it. The main difficulty with the compulsory-arbitration laws of New Zealand and Australia, from the examination I have been able to make of their operation, arises from the fact that they compel the arbitration of every dispute—"the butcher's, the baker's, and the candlestick maker's." Even with this apparent defect I observe no tendency in those countries to abandon the system, but rather to strengthen it; and remember that those States are pure democracies. I believe it would be wise to limit compulsory arbitration to those employments that are vital to the public at large, and, with respect to railroads, I should limit it to disputes with men in the train service. Surely the public are entitled to have the operation of trains continue and to call upon trainmen and the railroad officers alike to invoke and submit their disputes to the judgment of some high-class tribunal created by law to hear and decide such controversies, just as we are all required to submit to the judgment of public tribunals—the courts—controversies involving our property, our liberty, and our lives.

If the right of trainmen to strike is taken away, it is, of course, incumbent upon the Government to provide an impartial tribunal to promptly hear and decide their complaints. To my mind the chief objection to the Sherman antitrust law, as applied to labor disputes, was that it tended to prevent strikes without providing any other method to force a settlement of disputes. The laboring man's rights must be fully protected. We must substitute justice for both oppression and violence.

Mr. ADAMSON. Judge, has Congress any direct jurisdiction over any except those operating in interstate commerce?

Mr. LOVETT. No; I suppose not; but I am speaking generally of the principle of compulsory arbitration. I have observed this, that the employer, particularly the railroad, is subject to the control of public opinion, but the employees are not. We have had a demonstration that certain employees have absolutely no regard for public opinion, no regard for the opinion of Congress, no consideration for the Supreme Court of the United States—nothing but their own will. Now, the employer, particularly the railroad, is within reach of all of these influences, and they have got to yield to them. But if you provide for the arbitration of all railroad wage disputes, if you please, I have no objection to that so far as I am concerned; but make the finding compulsory only in disputes with the trainmen.

Mr. ESCH. By trainmen you mean men engaged in train operation?

Mr. LOVETT. Yes; I do not mean merely the actual trainmen, but I should include telegraph operators and men whose service is so essential that a concerted cessation of work would interfere with the public.

The CHAIRMAN. Would you include yardmen and switchmen?

Mr. LOVETT. I think I should.

Mr. ADAMSON. Are not switchmen engaged in operating trains?

Mr. LOVETT. Yes; I think I should include switchmen. I would include all those whose work is essential to the operation of the railroad. That is what the public is interested in. I would include everybody in train service and make it compulsory as to those. We have got to come to this sooner or later.

Mr. ADAMSON. Is it not historically true, Judge, that the brotherhoods did advocate arbitration until they became so strong that they thought they could get along without it?

Mr. LOVETT. I think it is true, Judge Adamson, that for a long time the employees, the brotherhoods, advocated arbitration in certain cases, and railroad managers generally opposed it. There were exceptions. I do not pretend to speak accurately on that subject, but that is my recollection of the history of the matter. But railroad men learn, strange as it may seem, like others; and it is not surprising that so long as they thought they had the advantage—that they could get better results by opposing arbitration than by submitting to it—that they opposed. Every man, of course, thinks he is going to be just, and each manager thinks he is going to be absolutely fair to the men who work for him, and he would rather decide than have somebody else decide it. But the situation has developed. Many of the railroad managers believe they can whip these strikers. My own judgment is that if the public were not interested, if it were between the railroads and the employees, the railroads would whip. But there would be a disorganization of the service; there would be a suspension of business that might be for a few days or might be for a few weeks, and in the meantime the commerce of the country would be entirely dislocated and upset, and there would be a great deal of suffering and hardship; and being subject, as the railroads are, to the force of public opinion, they would rather submit to a great deal than meet this issue. But whatever may be the present view of the railroad men, and whatever may have been their view in the past, the obvious fact is to-day that from the standpoint of the public these questions must be determined peaceably and without reference to the wishes of the labor leaders or the railroad men.

Mr. SIMS. Judge, then you do not include in this what the railroad or trainmen regard as a nonarbitrable question and one of personal relations? You do not except anything of that kind?

Mr. LOVETT. The only thing I except, Judge Sims, if I understand your question, is the power to compel a man to work if he does not want to.

Mr. SIMS. To continue a personal relation which is distasteful to him?

Mr. LOVETT. No, sir; he is not required to do that. It could not be done under the Constitution if you wanted to, because that would be involuntary servitude.

Mr. ADAMSON. But personal liberty does not authorize missionary work, you think?

Mr. LOVETT. Yes, sir; that expresses it exactly.

Mr. SIMS. Right there, Judge, do you think that a constitutional right, in its exercise, should be limited to individual exercise and not by agreement with others—all of them exercising an absolute constitutional right?

Mr. LOVETT. They are not exercising an absolute constitutional right, Judge Sims. If a dozen of us are doing work for some man, any one of us has the right to quit. Suppose we put our heads together and say that we all quit at the same time, at a certain hour. We will ruin this man's business, and he knows it. That is a conspiracy to injure a man, not a conspiracy to exercise our individual rights, because we have no individual right to injure anybody. So when the trainmen want to quit individually, without concert, they have a right to do it. But when together they agree and say, "We will quit at a certain hour and under certain circumstances for the purpose of stopping the business of the railroad"—stopping the running of the trains, and injuring the railroad and forcing it into concessions—they form a conspiracy to injure that railroad; it is not the exercise of an individual right, but a conspiracy to invade the individual right of another. That is the whole difference, as I see it.

Mr. SIMS. In other words, you do not think individuals have a constitutional right to organize to do that which they may do as individuals?

Mr. LOVETT. That does not state the case, Judge Sims, as I understand it.

Mr. ADAMSON. A man can quit without organization, can he not?

Mr. LOVETT. Yes, sir.

Mr. SIMS. But suppose he does quit as the result of organization; has he done any more than exercise his constitutional right?

Mr. LOVETT. It is the purpose that controls.

Mr. SIMS. But can any man's motive be questioned, as to whether or not he shall exercise a constitutional, guaranteed right?

Mr. LOVETT. No, sir. But the point is that when he conspires with other men, not to exercise his own right but to injure another man, the whole aspect of the case is changed. You know that is the foundation of the law of conspiracy.

Mr. SIMS. For the purpose of injury only; but their purpose is a benefit which they think they are entitled to have.

Mr. LOVETT. Yes, sir; but take the highwayman. When he puts his pistol at the breast of a man and demands that he deliver, what he wants is money. He does not want to kill the man; he does not want to injure, but he wants money, and that is the way he gets it. It is the method that he resorts to.

Mr. SIMS. But he does not have any constitutional right to rob anybody; only the means of carrying it out in general.

Mr. LOVETT. Neither does any trainman have any constitutional right to combine with other men to coerce a railroad company or an employer into giving him what he can not otherwise get.

Mr. THOM. Is not that conspiracy in the antitrust laws?

Mr. LOVETT. I think it is.

Mr. THOM. I have a right, as a business man, to do a certain thing, but I can not combine with another one in restraint of trade.

Mr. LOVETT. This rests upon the principle of conspiracy as the offense of conspiracy has always existed. What one man may do alone may be perfectly lawful, yet when he conspires with a group of men to do it, it may be unlawful in the law of conspiracy.

Mr. SIMS. The right of self-defense certainly would not be destroyed by more than one man being engaged in a common effort of self-defense?

Mr. LOVETT. No, sir.

Mr. SIMS. They often claim that with these wages they can not live and can not educate their families as they are entitled to, and they conspire together to bring about that which they first regard as absolutely necessary for their own existence.

Mr. LOVETT. They make a certain claim and they decide it themselves—the merits of it—very much as if I should say that certain property that you have is mine; I am entitled to it, and I can not live without it, and I go and take it. Now, there are tribunals to decide that question between us.

Mr. SIMS. But you indicate that an individual might do that which a number of individuals could not do?

Mr. LOVETT. Yes, sir; that is true; but we know, Judge Sims, that intent as well as method enters into an offense. And when an individual is not satisfied with working conditions he has the right to quit. He has no right to say to his employer, "I am not being paid enough," and walk into his office with a gun and say, "I will shoot you."

Mr. SIMS. Absolutely not; but I suppose——

Mr. HAMILTON. Mr. Chairman, are we going to observe our rules?

Mr. SIMS. I think perhaps I ought to desist, but the judge was on a matter so vital that I am so interested in that I thought I should like to ask him a few questions.

Mr. HAMILTON. They called me down a while ago for doing the same thing, and I wanted to reciprocate.

Mr. SIMS. I am glad you did.

Mr. ADAMSON. I am afraid of Judge Sims. I am much obliged to you, Mr. Hamilton.

Mr. SIMS. That is the first time I have ever heard of your being afraid of anything.

Mr. LOVETT. The next difficulty of the railroads I mentioned is the phenomenal increase in taxation. Unfortunately I have no remedy to suggest for this, and therefore I shall say but little about it. I feel, however, that no statement to this committee of the problems confronting the railroads of this country would be candid and true that failed to mention the great increase in taxation. The Union Pacific is, I suppose, fairly representative of other railroads in this particular. For the 10-year period ended June 30, 1916, the Union Pacific's systems mileage increased 40 per cent; its operating revenue increased 38 per cent; its operating expenses increased 44 per cent; its taxes increased 157 per cent; and its operating income increased only 22 per cent. And its taxes are still rising, for the increased income tax, the capital-stock tax, and the excess-profits tax imposed by recent acts of Congress, call for additional taxes from this company running into hundreds of thousands of dollars yearly. It is so easy to tax railroads; their property is open and visible; their accounts are all kept under the eyes of the Interstate Commerce Commission; and there is a public record of all they make and all they spend; and, knowing they can not escape, they always keep on hand the money to pay any tax. But it is to be regretted that, while exempting corporations of comparatively small income and capital, Con-

gress proceeds on the assumption, apparently, that the large corporations are owned by people of large wealth, whereas there are many stockholders in the largest corporations who have less than those exempted.

I always hesitate to interject into a discussion of this sort the question of widows and orphans, but I ought to state to this committee that the last list of stockholders, which we took from the books of the Union Pacific, which was for the January 1 dividend, showed that the stock of the Union Pacific is owned by 29,870 people, and 12,465 of these are women.

MR. ADAMSON. You ought not to apologize for that, because pure undefiled religion is to visit the fatherless and widows in their affliction.

MR. LOVETT. I trust you will always remember that.

MR. SIMS. How many stockholders did you say you have?

MR. LOVETT. We have 29,870 stockholders, of which 12,465 are women.

MR. SIMS. Are these women all widows?

MR. LOVETT. I could not answer as to that.

MR. SIMS. You are speaking of widows and orphans.

MR. LOVETT. Probably some of them are maidens and some probably have worthy husbands dependent on them.

The next point, and the last before the remedies we have to suggest, is the cumulative effect of these various conditions that I have been discussing upon the investor.

MR. ADAMSON. Is it your purpose, when you reach the question of remedies, to recur to this taxation subject?

MR. LOVETT. No; I have no remedy to suggest for that.

The cumulative effect of the various conditions I have described, upon the investing public, to which the railroad companies must look for the capital necessary to continue the development of transportation facilities, has been discouraging. For several years, certainly for the last five years, banks throughout the country have been overflowing with money—with uninvested capital. Call money rates have seldom been above 2 or 2½ per cent, and often lower. Time loans for two, three, and four months have generally been around 3 and 4 per cent in the money centers and places where money for railroad investment usually is to be found. Even the unprecedented industrial and commercial activity of the last year and a half or two years, which ordinarily would require so much money as to run up the rates, has not been sufficient to absorb the idle money or materially increase interest rates. Yet all this time high-grade railroad stocks, regularly paying good dividends for many years, were purchasable at prices yielding from 5½ to 7 per cent.

Of course, I do not wish to convey the impression that the strongest railroad companies have not been able to obtain capital for improvements. The strongest could obtain it, and probably will always be able to obtain it. But the average roads—the lines whose position is not yet so firmly established, or who have not such a large margin of financial safety—and certainly the weaker properties—are finding it increasingly difficult to obtain capital. Even the stronger lines, confronted with rapidly increasing expenses and fixed or diminished rates, and considerable uncertainty as to how they may be allowed to do their financing, have developed pronounced conservatism in all

their plans. The Commercial and Financial Chronicle, in its Financial Review-Annual 1916, gives a table from which I quote to show how rapidly the amount of railroad bonds on which no interest at all was paid has increased, and how the percentage of such noninterest paying debt has increased.

Year ended June 30—	Funded debt receiving nothing.	Per cent of total.
1910.....	\$790,499,252	7.94
1911.....	816,670,147	7.65
1912.....	1,015,367,522	9.12
1913.....	1,150,128,161	10.28
1914.....	1,306,764,285	11.30

Chairman Thelen, of the California commission, declared that "the real causes of the impaired railroad credit, in so far as such credit has been impaired, are to be found in unwise railroad construction; in unwise railroad administration, not to say criminal railroad administration; and, furthermore, in excessive issues of securities." He cited the Chicago & Alton as his first case of unwise, or worse, railroad administration and of excessive security issues. He also cited the Frisco case, the New Haven case, the Rock Island case, and the St. Paul & Puget Sound, although the latter appeared to be only a case of bookkeeping. While I am now connected with the Chicago & Alton, I had no connection with it until long after the transactions criticized, and nothing to do with any of such transactions; nor had I any connection with any of the other companies or transactions mentioned. I happen to know, however, that very much could justly be said on the other side of the Alton case, but it would be a misuse of the time of this committee for me to do so.

Grant, for the purposes of this hearing, that in some cases there has been "unwise railroad administration, not to say criminal railroad administration," as Mr. Thelen puts it. If it were not true, the railroad business would be the only business of any great magnitude in which there had not been "unwise" administration and even "criminal administration." Please note, however, that out of nearly a thousand railroad corporations in this country Mr. Thelen cited only four examples of financial management which he found occasion to denounce, and of these the Chicago & Alton and Rock Island cases occurred some 17 years ago. There will be dishonesty and mismanagement in all lines of business and in all walks of life. But we can not for that reason suspend business. We do not cease depositing our money in banks because there are now and then dishonest banks and bank failures. We must provide reasonable regulations to prevent, as far as we can, and punish dishonesty and mismanagement.

It would be folly to shape the railroad regulation of this country with reference to the Chicago & Alton case, the Frisco case, the Rock Island case, and the New Haven case. That is the trouble with most of the legislation we now have. It was designed to meet particular cases and to prevent certain conspicuous evils, and not for the regulation and building up of the most necessary transportation system in the world, and only as an incident guarding against and punishing

the evils therein. As Mr. Trumbull once expressed it, we should not "burn up the barn to catch a few rats." Surely we should not cripple and hamper the honest management of nearly all the railroad companies—99 per cent of them, at least—merely because there has been, or again may be, here and there a dishonest management.

Mr. Thelen cited the cases mentioned only as proof of the cause of impaired railroad credit in opposition to our claim of too much conflicting State regulation, and it is that aspect of his contention, particularly, that I challenge. Investors know a great deal more about the merits of railroad securities than Mr. Thelen supposes. If you will refer to the quotation as published in the papers any day you will observe a wide range in prices of different railroad stocks, showing that each is being very carefully gauged by buyers and sellers. In the days before complete publicity of all railroad affairs was fortunately required it was possible for dishonest manipulators in charge of a railroad property to deceive investors. Even then the bad character of the management was generally known and the stock more or less shunned by the larger investors. It was the poor who generally suffered.

Most railroad investors unacquainted with a security, generally consult some banker before buying. I am not speaking of speculators who buy and sell stocks, irrespective of their intrinsic value, merely for the rise or decline. I am speaking of those who, in these days, really furnish the money railroad companies get for their stock and bonds. These, to a very great extent, either consult bankers, or buy through bankers, or because the securities are brought out by certain bankers. The affairs of all railroad companies, certainly since 1906, have been as an open book. Their accounting methods, in the most minute detail, have been prescribed by the Interstate Commerce Commission. That commission has a great force of inspectors constantly going through railroad offices to see that the accounts are kept according to the rules. Frequent and regular reports upon forms prescribed by the commission are returned under oath to, and published by, the commission. Every banker and brokerage house has these reports and knows exactly the financial condition of each company. If any of these companies desire to make an issue of securities, its condition is easily ascertained. Any investor can find out all about it immediately.

There may be investors, but I should say generally very few, who would be deterred by the Chicago & Alton, the Rock Island, the New Haven, or Frisco financing, and avoid railroad investments. But there are thousands of investors who could and would easily satisfy themselves that the securities were properly issued and free from the vices of those cases, and take all such securities, if that were the only danger. But those investors can not satisfy themselves from the records of the commission, or otherwise, that the rates of the railroad company are not going to be reduced by some of the States, or held rigid by the Interstate Commerce Commission; nor that the company is not going to be hampered by some State commission in utilizing its resources to meet some great emergency; nor that the increasing expenses will not continue to soar from the coercion of unrestricted labor combinations; nor that the real operation and management of the property are not going to be dictated or controlled by the several State commissions, each perhaps with

a different and rival policy; nor that there will not be practical confiscation under the system of so-called valuation, which is being carried out by the Interstate Commerce Commission with a theory of depreciation which makes it impossible for any railroad ever to be worth as much as it was the day when built; nor that, with the ease with which it is being demonstrated, a railroad can be subjected to all forms of taxation, emergency and otherwise, it will not be taxed to death. It is the inability of the investor to get any assurance against such dangers as these, which, in recent years, have become so imminent, that really turns him away from railroad investment. He is not troubled about the Chicago & Alton, the Rock Island, the New Haven, and the Frisco cases, any more than depositors are deterred from putting their money in honest banks because there have been dishonest bankers, and bank failures caused by dishonesty.

I urge, therefore, that you do not accept the possibly comforting suggestion that the financial difficulties of the railroads are due to the financial mistakes or wrongs of the railroads themselves. The railroads have made mistakes and there have been wrongs in some of their financial operations, just as there have been mistakes and wrongs in every other business and occupation. But it would be a great delusion to assume that the few cases of mistakes and wrongs in this generation are to any appreciable extent responsible for the timidity of investors.

But let us assume all that Commissioner Thelen's argument implies. Grant that all railroads are mismanaged financially, and consider the cases he cites merely as examples of many others. What are you going to do about it? Will you leave the regulation of these evils to the States, where the evils have occurred? Or will Congress take hold of the subject in thorough fashion and enact a system of regulation, uniform throughout the country, that will effectually prevent fraudulent exploitation, and at the same time provide a simple and workable system under the direction of the Interstate Commerce Commission, without the conflict and confusion in the several State commissions that now exist? It was State charters and State laws and State functions that were exercised in the Alton case, the Rock Island case, the Frisco case, and the New Haven case. The action criticized in those cases was taken by virtue of no act of Congress, but under State laws alone. Instead of being brought up here in argument against full congressional legislation they afford rather overwhelming reasons why Congress should exercise its power. If it be true, as Commissioner Thelen contends, that these cases have injured railroad credit, then all the more reason why Congress should make them impossible in future. At all events, it is clear that the necessary transportation facilities for this country are not going to be provided by rehashing these old cases or by leaving the various States to regulate the subject by independent, uncoordinated, and often conflicting laws, which, at best, will only block progress.

Probably a billion dollars of new capital per year for an indefinite period will be necessary to keep the railroads of this country up to the needs of our people and pay maturing bonds. Where are we to get the money? All conditions attending railroad investments have totally changed in recent years; that is to say, under Government regulation. We must recognize essential differences between condi-

tions under which capital was attracted for building the railroads of this country and under which we must get it for further development. In the former conditions there were no restrictions, or practically none, upon the inducements offered for the money. The possibility of great profits and tempting bonuses in the form of stock were offered, whereas the growing legal restrictions upon the issue of securities have eliminated the speculative element and confined the transaction to an investment with the usual risks of loss and without any hope of speculative profit or anything more than a moderate return, if any at all. The railroads can no longer appeal to the speculative instinct, which is a very strong one. The money required for the continued development of our railroad facilities must, therefore, be raised from investors pure and simple, and investors are ordinarily very conservative and must be assured that the investment is good and the payment of interest or dividends as certain as anything human can be before they part with their money. The very large class of people who desire something more than a mere investment—a profit, a speculative return or the possibility of a speculative return on their investments—the class who really built the railroads of this country, find, in an increasing degree, the field of railroad investments closed to them by regulation; and they will more and more turn to industrial and mining securities, which practically are unregulated by the Government and which offer unlimited possibilities for speculative profits as well as losses. We must, I say, take these changed conditions into account in any policy or system having to do with the future financial requirements of the railroads.

Whatever we may think of "watered stock," I do not believe there is fair room for doubt that the magnificent system of railroads of this country would not have been built without it. It was the speculative feature—the stock bonus thrown in with the bond bought—that attracted men and money to the support of the railroad enterprises. Who would have built a railroad, in the days when ours were built, if given only bonds paying 5, 6, or 7 per cent for his money? The "watered stock," that represented nothing but a gamble upon the settlement and growth of territory to be served, appealed to the gambling instinct so strong in human nature and encouraged men to risk their fortunes in enterprises that would not have attracted or interested them merely as an investment. I am not defending "watered stock" and I am not condemning it. I am merely stating what I understand to be the facts for the light they throw upon our problems of to-day. The regulation of the issue of railroad securities has come and it has come to stay, and "watered stock" is practically impossible under such regulation. Our appeal in the future, therefore, must be to the investor whose conservatism demands safety and a certain and regular return upon his money. It is to these investors that we must look for the hundreds of millions of dollars that will be required every year to keep the transportation facilities abreast of the growth of the products and commerce of the country.

Commissioner Thelen, in his statement before this committee (hearings, p. 553), cited the finding of the Interstate Commerce Commission that one cause of the insolvency of the Frisco was disproportionate capitalization, and declared his belief that this was one of the

most potent causes of the financial difficulties of the railroads, and he argued to show that railroads raise money on bonds rather than stock. He did not tell you, however, how Frisco stockholders, or any other body of stockholders, could be induced or compelled to take additional stock at 100 cents on the dollar if selling in the market at perhaps 50 cents or 25 cents. All the railroads of the country have stock outstanding and probably the most of it is selling much below par. The laws of most, if not all, the States prohibit them from issuing and selling more stock for less than par. It is worse than idle to say that these companies shall raise capital by calling upon their stockholders to put up more money for more stock at par when they can buy it in the market for very much less. The situation is a practical one, and such theories and suggestions take us nowhere.

There is, however, a feasible method by which the disproportionate capitalization may be diminished and stockholders enabled to put up more money in the future, and that is by abolishing the par value of stocks, so that additional stock of a company may be issued for what it is really worth. Take, for illustration, the stock of a corporation actually worth only 50 cents on the dollar. Of course, it is absurd to suppose that a stockholder will take more of it and pay 100 cents on the dollar. But he probably would be willing to take more of it at \$50 a share, or at \$40 a share, or at whatever the stockholders themselves might agree upon. It would be a matter wholly between the stockholders so long as they got a certificate only for what was actually paid into the treasury of the company, and not a certificate for \$100 when paying only \$40 or \$50. A stockholder who took 1 or 10 or 100 shares at \$50 a share would pay into the company fifty, five hundred, or five thousand dollars in cash and the company's capital would be increased by that amount. Its books would show that amount of increased capital, and nothing would be said about the value of the stock, par or otherwise. Stock watering would in such case be actually impossible. The stockholders would be enabled to come to the relief of their company, which it is impossible for them to do under existing State laws, requiring stock to have a par value, regardless of its real value, and forbidding the issue of stock for less than par. The first evil pointed out by the Interstate Commerce Commission in the Frisco case and the "most potent" difficulty, which Commissioner Thelen hopelessly leaves with you, would largely disappear. Of course, there will be companies whose assets are less than their indebtedness or whose situation is such that they can not expect to earn a return on the stock. In such cases the stockholders naturally would not take more worthless stock at a substantial price. But there are many cases in which stockholders would assist the company by taking additional stock where they can not do so now.

Senator TOWNSEND. Do you wish to discuss in connection with this question as to the relation between rates and stock issues—that is, based on the assumption that the railroads should have a rate that will yield a reasonable return on the investment in the property used in public service, and that that should determine the stock issue?

Mr. LOVETT. I had not intended to discuss that, Senator, but I will refer to it briefly. I have been connected with railroads practically all my business life, and largely with rate questions and controversies, and I have never known a rate to be made or changed with

reference to any question of stock or bonds. Whatever other theories there may be, my judgment is that the issuance of stock and bonds and the amount of stock and bonds are matters that have no more to do with railroad transportation rates in this country than the man in the moon, if there be one there.

Senator TOWNSEND. When one of your rates is attacked, do you defend by showing the value of your stocks and bonds?

Mr. LOVETT. In no rate litigation I have been connected with—and I have been connected with many—did we rely upon the stock and bonds. We introduced them because the Supreme Court, in the case of *Smyth v. Ames*, said that no hard and fast rule could be established as to what was a reasonable rate; that all circumstances bearing upon the value of the property should be taken into account, including the stock and bonds, the market price of the stock and bonds, and a great many other circumstances that I do not recall; and, after enumerating all the circumstances the court could foresee, it then said, “and all other circumstances having a bearing upon the question.” In every rate litigation I have been connected with, beginning with the early rate litigation with the Texas Railroad Commission, we went further and proved what we considered to be the value of the property, putting the stock and bonds in simply as one circumstance, along with a great many others.

We must not overlook the far-reaching effect which the prevailing World War is likely to have on our financial situation. Prior to the war billions of European money was invested here. We had practically none invested abroad. Money required by Central and South American and other foreign countries was furnished by Europe, not by us. All that is changed. The European money has been largely withdrawn, and, fortunately, we have been able to absorb the securities in which it was invested. It probably will be a long time before Europe has any money to reinvest here or to supply Central and South America or other nations. There will be a great call upon us for money from Europe itself, and the nations formerly supplied by Europe will also come to us. When the war ends and our people can decide with reasonable certainty which of the nations are insolvent and which will be able and willing to pay their debts, we probably shall begin to invest very extensively in bonds of those we know to be good. The Governments of foreign countries as well as many foreign enterprises will be competing with the railroads of this country for the hundreds of millions per annum that the railroads will need.

Now, gentlemen, I come to the remedies which we have to suggest. Mr. Thom has presented so clearly and so fully the opinion of railroad executives—in which I concur—respecting the remedies which should be adopted, that I will not take the time of this committee to restate them at length, or do more than supplement, without repeating, the reasons he gave, and answer some of the objections which have been suggested: First, we believe that the unification of regulation is essential, and that, with the rapid increase of State commissions in recent years, Congress will in time be compelled to exercise its power in the premises. To unify regulation, there should be a complete, consistent, harmonious, and related system of regulation. We believe the best, if not the only practicable, method is the Federal incorporation of railroads by general law, which will make

incorporation thereunder compulsory, thus imposing on all railroad companies throughout the United States the same corporate powers and restrictions with respect to their financial operations and the same duties and obligations to the public and the Government with respect to their duties and obligations as common carriers, so that every investor will know precisely what every railroad corporation may and may not lawfully do in issuing and selling securities, and every shipper and traveler may know the duty and obligation of every railroad company to him, whether in Maine or California, in Michigan or Texas.

Right here let me pause to call attention to a harmful statement—though not intended to be such—by Commissioner Thelen to this committee. He said that, so far as he knew, the railroads might be advocating Federal incorporation by special act of Congress, thus leading to a swarm of railroad representatives about the Capitol, constantly seeking from Congress special favors and special consideration. Now, I have attended a great many conferences of the railroad executives, who have been considering and trying to help with suggestions for a constructive system of legislation, and I never heard a single railroad man or a railroad lawyer throughout this whole time in all these conferences suggest Federal incorporation by special act of Congress. We do not want that any more than Commissioner Thelen does; and certainly the first time that I ever heard of it was when I read it in Mr. Thelen's statement before this committee that that might be something that we are seeking. We want a unified regulation, a regulation that will put all corporations upon the same basis, and give notice to everybody, to every investor, what railroad corporations may do and what they may not do, so that in issuing securities there will be but one law to examine and not the laws, general and special and otherwise, of half a dozen or a dozen different States; so that every corporation shall have exactly the same rights and the same obligations with respect to its financial matters; so I want to say that we do not, as Mr. Thelen supposes, ask for any special legislation.

We believe that Congress has power to provide by general law for the incorporation of all railroad companies engaging in interstate commerce, and to require all existing companies to reincorporate under such law. I myself have no doubt of it. I will cite, without taking your time to analyze, the decisions of the Supreme Court, which, in my opinion, make this clear: *McCulloch v. Maryland* (4 Wheat., 316); *Houston East & West Texas Railway v. United States* (234 U. S., 342); *Reagan v. Mercantile Trust Co.* (154 U. S., 413, 414, 416); *Smyth v. Ames* (169 U. S., 466, 519); *Minnesota Rate Case* (230 U. S., 352, 425); *Thompson v. Union Pacific Railroad Co.* (9 Wall., 579); *California v. Central Pacific Railroad* (127 U. S., 1); *Interstate Commerce Commission v. Goodrich Transit Co.* (224 U. S., 194); and *Southern Railway v. United States* (222 U. S., 20).

In *Reagan v. Mercantile Trust Co.*, dealing with the Federal charter of the Texas Pacific Railway Co., and in *Smyth v. Ames*, considering the Federal charter of the then Union Pacific Railroad Co., it was taken as a matter of course that in creating a Federal railroad corporation Congress had the power to withdraw it from State regulation with respect to even its intrastate rates, and the only inference from the *Minnesota Rate Case* is that in regulating interstate rates

Congress, as incidental to such regulation, could regulate intrastate rates, and in the *Shreveport* case (234 U. S., 342) the court directly so decided.

Congress is vested by the Constitution with power to regulate interstate and foreign commerce, to establish post roads, and to make war and provide for the national defense. In exercising these and other express powers, Congress is authorized by the last clause of section 8, Article I. of the Constitution, "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof," and the Constitution and the laws and treaties made in pursuance thereof are the "supreme law of the land." It is easily demonstrable that the wise and effective regulation of interstate railroad rates requires the like regulation of intrastate railroad rates. It is familiar constitutional law that any power which it is necessary for Congress to exercise in carrying out and executing the powers expressly conferred upon it is to be implied from the last clause of section 8, Article I, and thus follows the power to regulate intrastate rates whenever it is necessary to the effective regulation of interstate rates. But I will not pursue the legal argument, for the question seems settled by the cases cited.

Congress may go as far as it likes in the regulation of the corporations created by it and of the railroads owned by them. It may withdraw them entirely from regulation by the States or it may permit regulation to such extent as it may prescribe. It is, of course, for Congress to say how far it will go.

I have seen a suggestion from some of the opponents of Federal incorporation that it was a scheme of the railroads to try to escape taxation by the States. Possibly, if the regulation was being enacted by Germany for us just at this time, it might be so provided; but the legislation is to be enacted by the Congress of the United States, which does not represent the railroads merely, but represents the whole people of the United States, and the suggestion that the Congress of the United States would withdraw that source of revenue from the States and would exempt the railroads from taxation by the States is not at all credible.

My own opinion is that it is entirely practicable for Congress to provide for the taxation of these railroads by the States in a manner that will provide for a fair and equitable distribution of the taxes between the different States, rather than to allow each State or one State to pile on three or four times as much as it should and another not as much as it should. Congress could require the railroads running through several States to be taxed as a whole, and to be apportioned by the different States on mileage, or any other basis that it wanted to. We are not advocating anything of the sort, and possibly it would be unwise in the original legislation to undertake it. It is something that ought to be studied. We are not asking it and not advocating it, but speaking from my own individual views I believe it would be a good thing for the States and for the whole country if that were done. I am sure it would not decrease the taxes of the railroads; it might increase them; but there would be a more equitable distribution among the different States. But I wish to be understood as not advocating that at all.

We believe that exclusive congressional regulation of the issue and sale of stock, bonds, and other securities, of the rates to be charged for the transportation of passengers and property, and of all matters of transportation is absolutely necessary in order to provide an adequate system of transportation for the country and to check the growing fear that rapidly increasing State regulation will lead to conditions seriously impairing the service as well as the credit of the railroads.

Let me refer again, and emphasize if I can, to the recent development of this State regulation, within the last five years largely, and that we do not yet realize or appreciate the full effect of it.

The most urgent feature, in my judgment, is the exclusive regulation by Congress of the issue of securities, with provision for the proper establishment, maintenance, and financing of all interstate railroad systems, without reference to the conflicting and peculiar, if not selfish, requirements of some one or more of the States traversed.

The consensus of opinion of the railroad executives who have been considering this matter was that the regulation of all matters essentially local and incidental, not impairing the service, and all matters of taxation should remain with the States, as at present. The corporation should not be entitled to remove suits to the Federal courts by reason of being a Federal corporation.

Experience, I am quite sure, will demonstrate the wisdom of every step which Congress may take extending its regulation of interstate railroads, in lieu of conflicting State regulation.

You may well ask whether it is necessary to federalize all railroad companies by requiring them to reincorporate under an act of Congress, in order to enable Congress to regulate their securities, their transportation charges, and their service. My own opinion is that it is not. That is to say, I believe it would be practicable, with proper care, to draft a law by which Congress could regulate State corporations engaged in interstate railroad transportation in the particulars mentioned. But it is not clear that this could be done. I am sure, however, that the object could be accomplished more effectively, with less friction and confusion, and with better results to the public and everybody, by requiring Federal incorporation. I will illustrate briefly some important differences in the two systems.

It is elemental law that a corporation derives its corporate powers from the government that creates it and can exercise none not conferred—especially none prohibited—by that government. Now, let us take for illustration some well-known railroad—one near us—say, the Baltimore & Ohio. That company, I believe, is a corporation of the State of Maryland. It can exercise only such powers as the State of Maryland confers upon it. It can exercise even these in some other State only by consent of such State. But it can not exercise in any other State any more than in Maryland powers denied to it by Maryland, the State of its creation. Ordinarily a State specifies the maximum amount of capital stock a corporation may issue and prescribes how it shall be issued and disposed of and regulates in detail its corporate functions, particularly in the matter of capitalization. Let us suppose that Congress, in regulating the finances of the railroads of the United States, prescribes corporate procedure entirely different from and in direct conflict with that prescribed for the

Baltimore & Ohio by the State of Maryland. Suppose the laws of the State of Maryland expressly deny its creature, the Baltimore & Ohio, the necessary power to do the financing provided for by the laws of Congress. May the Baltimore & Ohio proceed to do things prohibited by the laws of the State that created it and exercise powers denied by that State? My own opinion is that, within the act of Congress, it may. But the question is doubtful and able lawyers disagree. Without taking the time to argue the question, my reasons, briefly, are that we live under a dual government; that the National Government operates directly on the citizen, the corporation, all property, and everything within its territory, precisely as the State laws do; that the laws of Congress are paramount; that Congress has plenary power to regulate interstate commerce and all the instrumentalities thereof; and that, if Congress declares by a proper enactment, that a railroad company, or other instrumentality of interstate commerce, shall possess and may exercise certain powers, that declaration is the supreme law, and any State law inconsistent with it must yield.

But I am much troubled by this consideration: Many States have reserved the power to repeal railroad and other charters granted under their laws. Suppose the State repeals the charter of the railroad company. It might be within its rights; it might not be responsible to Congress. If the reservation of the right was clear it might not even be necessary for the State to give a reason for its exercise. The corporation would be at an end. There would be no congressional act for incorporation to which the railroad could turn. How would you meet such a situation in attempting to carry out a national policy by utilizing the existing State corporations? This, to my mind, is the most serious and, indeed, insurmountable obstacle to any plan for utilizing the State corporations in a system of national regulation.

Mr. ADAMSON. Has that ever happened, Judge, where a State left the property homeless and houseless by repealing the charter and there was nobody else ready to take it up and renew it?

Mr. LOVETT. It is about to happen in Texas, Judge Adamson. My information is that a bill was introduced in the Texas Legislature to repeal the charter of any corporation of that State that obeys the Interstate Commerce Commission instead of the State commission. That is what it amounts to, because of a controversy that has grown out of the decision in the Shreveport case; and I should not be at all surprised if Congress passes a law authorizing and permitting a State railroad corporation to issue bonds when the policy of that State is not to allow it to issue them, that some State would take measures to forfeit the charter of the corporation that obeyed the Federal law rather than the State law.

You could not, in an act of this sort, compel the corporation to issue the bonds. The most you could do would be to give it the right to issue them; and the State might say, just as they sometimes say to the corporations about their interstate rates, "Yes; you have the power to do that; you have the power under the act of Congress to issue these securities, but if you do it, we will exercise our power. the power which we have, to take away your charter."

Mr. ADAMSON. Would you compel the directors of a Federal corporation to issue bonds and stocks if they did not want to?

Mr. LOVETT. I would not; but I would put the directors of a Federal corporation where they could exercise this right provided for in the national interest, without coercion from any State.

So long as the States would content themselves with a mere refusal to grant, or even a prohibition of the power to issue securities and take other action contemplated by an act of Congress, the difficulty would not be impossible, because, for the reasons stated, the law of Congress would prevail. But the States which have reserved in their constitutions, or by other valid law, the right of alteration, amendment, and repeal of corporation charters, as most of them have, could, in my judgment, effectively coerce all railroad corporations created by them in submitting to all the restraints and restrictions imposed by them upon such corporations, however ample might be the right and power conferred by an act of Congress.

I come back, therefore, to the proposition that a general law providing for the incorporation of all new and the reincorporation of all existing railroad companies engaged in interstate commerce, with such limitations and restrictions upon corporate powers as Congress may prescribe, is the only effective means for regulating the financial operations of railroad companies, and providing a method by which they can reestablish their credit and get the money that will be absolutely necessary for the continued growth and development of the transportation facilities of this country.

I do not bother myself with any legal theories as to whether the reincorporation under an act of Congress of an existing State railroad company works a dissolution of the corporation. That is merely dealing with legal fictions. Nor do I care much about the theories as to the rights of stockholders to object to fundamental changes. It is enough that every railroad was built and engaged in interstate commerce, and every stockholder has enjoyed the benefits with full knowledge of the power of Congress to regulate that commerce and every instrumentality of it. Congress has regulated it already in various ways, including its bookkeeping with respect to strictly intrastate as well as interstate transactions (*Interstate Commerce Commission v. Goodrich Transit Co.*, 224 U. S., 194); the character and equipment of its cars even not engaged in interstate commerce (*Southern Railway v. United States*, 222 U. S., 20); and the manner in which it shall treat, in its accounts, abandoned property, even though this deprives certain preferred stockholders of dividends which they might otherwise get (*Kansas City Southern Railway Co. v. United States*, 231 U. S., 423). No stockholder of a railroad engaged in interstate and foreign commerce ever had any right to withdraw such instrumentality of interstate commerce from business whenever the method of regulation did not suit him. If Congress chooses to make the corporation owning a railroad a Federal, instead of a State corporation, it is merely exercising its right to determine the means and agencies for the better regulation of such commerce; and I can not see that a stockholder has any more right to object than when Congress chooses cars of certain designs and equipped with certain appliances, instead of those selected by the owners of the railroad.

With respect to existing corporations, Congress should require them to reincorporate by filing with the designated agency of the Government articles of reincorporation, which should contain the

statements and declarations Congress may prescribe; and thereupon they should become Federal corporations, instead of State corporations, and possess the powers which Congress, by the act for reincorporation declares such corporations shall possess.

Mr. ADAMSON. Judge, would it answer your purpose to apply the compulsion to the new corporations, and only permit the old corporations to reincorporate whenever they saw proper?

Mr. LOVETT. No, sir; it would not. It would serve my purpose, but I do not think it would serve the purposes of the public.

Mr. ADAMSON. I mean the purpose you have in view.

Mr. LOVETT. No, sir. It would not, for the reason that to make it merely optional with the railroad company whether or not it should incorporate under the act of Congress would be giving that corporation the power to supersede the laws of a State at its pleasure. If it were optional, the Union Pacific could run along in obedience to the State laws until it made up its mind to change, and then it would supersede absolutely the State laws relating to its corporate affairs. I do not believe that option ought to be given to any corporation. I do not think it could be, because I do not believe an act of Congress that left it optional would be constitutional. In order to supersede the State laws it requires the paramount power of Congress. So I do not believe it would be constitutional nor do I believe it would be right. In some States, where the State laws are not as oppressive as others, the corporations would probably stay in.

Mr. ADAMSON. You are an older and better looking lawyer than I am; but I believe I would follow your constitutional law in the reverse direction. I think your compulsion would be more of a constitutional difficulty than your voluntary scheme.

Mr. LOVETT. I hate to be shaken in my own opinion, Judge Adamson, but—

Mr. ADAMSON. I can not shake you, but I am trying to learn about this thing.

Mr. LOVETT. I have thought a great deal about this subject. It has been considered by a great many very able lawyers, and I believe they are all agreed on that point, many of them very much against their will. When the railroad executives first took up the discussion of this I believe a large majority were in favor of having it optional, but they were all forced to the other view because they were convinced that it would not only not be constitutional, but that the reason for the law would very largely disappear, to leave it optional to a railroad to change its government or not, at its pleasure.

The obligations to creditors and all other private rights and relations should continue as before, and the stock and the certificates representing it should remain as before until transfers are made in the usual manner; and, of course, the certificates would, in form as well as in fact, represent stock of the reincorporated company. Someone has discovered in this suggestion a scheme for validating invalid stock. Such would not, and certainly need not, be the effect, for it could be provided in the act that such reincorporation should not, as between the corporation and its stockholders and creditors, create any new rights or obligation or validate anything already invalid. In short, on a given day to be specified in the act of Congress, all railroad corporations of the United States would cease to be State corporations and would become Federal corporations with the

powers set forth in the act of Congress; and would thereafter be bound, with respect to all corporate powers and action, by the terms of such act, rather than by the various State statutes and special charters.

Mr. ADAMSON. Then the act of Congress would be the charter of each corporation?

Mr. LOVETT. In effect; yes, sir.

Federal incorporation, or complete Federal regulation in any form, will, of course, add enormously to the work of commission supervision, and I have already pointed out that the Interstate Commerce Commission is even now hopelessly overburdened.

How is this problem of supervision to be solved? Railroad executives have thought of it a great deal. All realize that supervision has come to stay, and none would abolish it if he could. But how can it be made workable? There have been proposals that the membership of the commission be enlarged, and, indeed, that it be enlarged to such an extent that it may subdivide itself into several commissions sitting separately. We see no objection to the enlargement of the commission to such an extent as Congress may deem advisable, but we believe it would be extremely unwise to attempt to solve the problem by having the commission divide itself into several sections. Suppose that, instead of creating circuit courts of appeal and other tribunals, the Supreme Court of the United States had been enlarged and divided into sections for the final decision of cases? It is not certain that there would have been confusion and uncertainty and a great loss of character for the court, and that it would not have attained that confidence, respect, and esteem of the people which is now so universal?

Moreover, the Interstate Commerce Commission under existing law is clothed with different functions which are so inconsistent as to greatly impair its use to the country. It is charged with the duty of detection and punishment, and at the same time of hearing and deciding. In reorganizing the commission we believe it would be wise to separate these inconsistent functions, which violate one of our fundamental principles of government, and that such separation will also lead to a better organization.

We believe that several commissions are necessary. The present Interstate Commerce Commission should be vested with the higher powers and duties arising under the interstate-commerce act and other laws of Congress regulating commerce, such as the power of hearing and deciding complaints, and over the rates and the regulations of the carriers and the issue of securities; and that the remaining duties, such as inspection, detection, prosecution, and correction, safety-appliance requirements, statistics, etc., should be conferred upon a new commission with some other name—for instance, "Federal railroad commission." But in order to coordinate and harmonize the system of regulation the Interstate Commerce Commission should have the right, but should not be required, to review any action of the additional commission.

We also believe that regional commissions should be established to assist the Interstate Commerce Commission in exercising its jurisdiction, and to that end should make all such investigations and hear and determine all such complaints and perform such other duties as the higher commission shall direct. The orders of the regional commis-

sion should not become effective until approved by the Interstate Commerce Commission, but should stand approved as, of course—unless excepted to at a time to be limited—somewhat analogous to the practice with respect to masters in chancery. The regions ought to be created with reference to traffic territories rather than geographically; and there should be a sufficient number of them to afford an opportunity to promptly hear and determine the complaints of every locality, and as near the complaining locality as practicable. We believe that all the commissioners should be appointed by the President, with the consent of the Senate, for long terms, and should receive good salaries. It is necessary not only to get good men but to prevent them from becoming mere clerks of the principal commission, which is an evil feature of the present system of hearing and deciding cases.

The reorganization of the commission along such lines would, in our judgment, provide a sufficient number of intelligent and able agencies for the prompt decision of all questions and quick performance of all the duties devolving upon the commission under the law, and avoid those long delays that are so hurtful in the decision of commercial matters. Questions of rates and commerce can not endure delay. That is one of the most important questions in Government regulation of railroad rates. Changes in trade and trade relations are frequent and rapid, and rates must be adjusted to them. Any system of regulation which does not provide for a prompt decision of such questions will bear heavily upon commerce and business. The plan suggested for a commission to deal with and enforce the purely administrative and punitive provisions of the law and for a sufficient number of regional commissions to assist the Interstate Commerce Commission admits of such expansion as the growth of the work and the extension of the law may require. The utter inadequacy of the present organization to do the work imposed upon it can be better understood when it is realized that but two additional members have been added to the Interstate Commerce Commission since it was created 30 years ago, although the duties of the commission have been multiplied many fold by the amendments and additions to the interstate commerce act since it was originally passed and by the enormous growth of the railroads and the commerce handled by them.

Finally, gentlemen, I wish to say that the responsibility for the railroad development of this country, for providing the necessary transportation facilities for the rapidly growing population and commerce of this country, no longer rests with the railroad officers and railroad managers entirely. We have our share, but it rests primarily on Congress. Whenever the Government regulates the rates and regulates the financial administration of railroads, and regulates the borrowing of money and the issuance of securities, it relieves the railroad officers of the responsibility of providing and developing transportation systems except within the limits of the revenue that can be realized from such rates and under such restrictions.

Now, we do not complain of this regulation. I am distinctly in favor of Government regulation. I think the greatest blessing that ever befell the railroads of this country since my connection with them was the act of 1906, which gave the commission the power to send its inspectors to the offices of the railroads and effectively detect and punish rebates.

That put an end to the greatest and most blighting evil in the railroad business. There are many other advantages from Government regulation to the public as well as to the railroads, and that leave no doubt, at least in my mind, that Government regulation has been a great blessing to the railroads, and we, of course, all know that no back track is going to be taken on it.

But the overwhelming necessity is to have a unified system of regulation. Instead of a multitude of governments each establishing its own regulation, its own system, most of it prompted by some particular evil, most of it designed to punish and restrain and restrict the exercise of corporate powers; never any conference or cooperation or coordination of these systems of regulation—it is impossible to provide this country with the railroad transportation facilities necessary under such conflicting laws. Let me say, again, at the risk of being tedious, because it is vastly important, we do not realize and do not appreciate the extent of this State regulation, because it is so new. Think, for a moment, that 10 years ago the great trunk lines were unrestricted in their financial operations. This great territory lying between the Potomac and Ohio Rivers on the south and Canada on the north, and including New York on the east and Illinois on the west, within only the last 10 years has been subjected to this conflicting regulation, and much of it within the last three or four years. We have not yet realized the full extent of this regulation, and the commissions have not yet gotten into full action. We ought to have a complete system of regulation, a uniform system, applying throughout the country, with all the administrative agencies to effectively enforce it, and to hear and determine every complaint. Let the existing State commissions, if they choose—and most of them are already authorized—be alert to look out for the interests of their own people, and when there is anything in the situation which they think is wrong, submit it to the Interstate Commerce Commission.

Mr. ADAMSON. Will you enumerate some of the things you think might be left, that these State commissions might do, if your plan were adopted?

Mr. LOVETT. I shall be glad to do so.

Mr. ADAMSON. If you do not leave much for them to do, we might turn them off and save their salaries.

Mr. LOVETT. You might employ them as regional commissioners. Will you indulge me a moment?

Chairman Thelen, of the California commission, in his statement before this committee, at page 536 of the record, stated that during the year ended June 30, 1916, the following utilities of various classes filed reports with the commission:

Steam railroads, operative.....	48
Steam railroads, lessor.....	13
Steam railroads, under construction.....	4
Electric railroads, operative.....	35
Electric railroads, lessor.....	2
Express companies.....	3
Car companies.....	2
Water carriers.....	18
Electric companies.....	91
Gas companies.....	35
Gas and electric companies.....	17
Telephone companies.....	114

(There seems to be some activity in the telephone business.)

Mr. ADAMSON. That commission evidently had some duties other than those which related to railroads.

Mr. LOVETT. (Continuing reading:)

Telephone companies.....	114
Telegraph companies.....	3
Telephone and telegraph companies.....	7
Water companies.....	329
Warehousemen.....	183
Wharfingers.....	13
Total.....	917

Of which total, only 48 were operating steam railroads; that is, railroads which would come under the supervision of the Interstate Commerce Commission.

Mr. ADAMSON. What I suggested was, would there be any duties left for them to perform in connection with these highways of traffic?

Mr. LOVETT. There would be, Judge Adamson. The Texas Railroad Commission is expressly required by the act creating it, to keep posted about all the affairs of the railroad companies, and to regulate those that are within its jurisdiction; that is, within the State.

Mr. ADAMSON. Would not a Federal incorporation take it out of that jurisdiction?

Mr. LOVETT (continuing). And to file complaints with the Interstate Commerce Commission with respect to any matters within the jurisdiction of the Interstate Commerce Commission they should deem proper.

Now, these commissions, aside from their other duties, could be alert for the interests of their States, and could take proceedings before the Interstate Commerce Commission, whenever a matter that affected interstate rates, affected the interests of their States, arose. There would be no doubt that many matters, like grade crossings, and a multitude of things affecting interstate railroads, purely of a local character that should be left under their jurisdiction. That would depend, of course, on how far Congress wished to go.

Mr. THOM. Taxation would be another thing.

Mr. LOVETT. Yes; taxation.

Mr. ADAMSON. Judge, if you did not, in the original act, put in there all those things, the question would be always open and there would be agitation to get rid of them after you once incorporated under the Federal law.

Mr. LOVETT. It would rest entirely with Congress how far they would go.

I have but few words more, Mr. Chairman and gentlemen. It seems hardly necessary to emphasize the importance of the railroads to this country. The European countries existed and grew up before there were any railroads. The towns and cities and business and population were all practically set or placed before there were any railroads. They have more or less water transportation, whereas in this country we have almost none; the country was built on, and to a considerable extent by, the railroads.

The population is adjusted to the railroads; the agriculture is dependent upon the railroads; manufacturing and everything is dependent upon the railroads and railroad transportation. There is scarcely a village in the United States, and I am sure there is no

town of over 10,000 population that is not dependent upon some railroad, almost, for its life. There is no country in the world which is more dependent upon proper railroad transportation than the United States; and it does, I submit, reflect somewhat on our capacity for self-government to allow transportation facilities as vital as ours is to the life of this Nation to be torn and discouraged and demoralized by such a medley of regulation as we have, and as we have rapidly developed in recent years instead of establishing one complete system for the regulation of all the railroads in the interests of all the people of all the States.

Sooner or later Congress must take hold of this. It may not be done now, in this term or at this session, or the next year or the year after; but the time is coming when Congress will have to take control of the railroads of the United States and regulate them in the interest of all the people of this country, and the sooner it is done the better.

I regret to have taken so much of your time, and I am very grateful for the patient courtesy you have shown me. Of course, I am ready now to answer any questions.

Mr. ADAMSON. Mr. Chairman, do you wish now to go on with the cross-examination? It is near adjournment time, and possibly the judge would prefer to rest.

The CHAIRMAN. I would prefer to go on now for half an hour.

Mr. LOVETT. It is perfectly satisfactory to me.

The CHAIRMAN. You stated, Judge Lovett, that the Union Pacific was a Federal corporation and its property was sold out under foreclosure, and that in reorganizing, inasmuch as there was no Federal incorporation act, you were obliged to go to a State for your charter. Do you know why the Union Pacific Co. went to the State of Utah for its charter?

Mr. LOVETT. I was not connected with the property at that time, Mr. Chairman, but my information is that they wanted power to acquire everything that the Federal corporation owned, including the stocks of certain coal mines and various other properties, and that power was not obtainable under the laws of any other States in which the line was situated. That, however, is hearsay. The law of Utah authorized it to purchase whatever was sold at the foreclosure sale of the Union Pacific properties.

The CHAIRMAN. Was there a special act of incorporation passed in Utah, or did you incorporate under the general law?

Mr. LOVETT. Under the general law.

The CHAIRMAN. Did that general law contain the powers which you desired?

Mr. LOVETT. Yes, sir.

The CHAIRMAN. In how many States did the Union Pacific operate before this new corporation was formed, and how many after, and what States?

Mr. LOVETT. Iowa, Missouri, Nebraska, Kansas, Colorado, Wyoming, and Utah. I speak only of the Union Pacific proper and not of its subsidiary companies.

The CHAIRMAN. That is seven States.

Mr. LOVETT. Yes, sir.

The CHAIRMAN. And in how many corporations did it hold such a controlling interest in the stock as to enable it to control their operations—and I am speaking now of railroad corporations—and in what States?

Mr. LOVETT. Are you speaking now—

The CHAIRMAN. Prior to the Utah incorporation.

Mr. LOVETT. The Union Pacific Railway Co., the original Federal corporation, the Kansas Pacific Railroad Co., a Federal corporation, or possibly a Kansas corporation—

The CHAIRMAN. I do not ask you to recapitulate the corporations, but I would like to ask you to state how many States, outside of these seven, you operated in through the ownership or control of other corporations.

Mr. LOVETT. It controlled companies that are now embraced in the Oregon Short Line Railroad Co.—

The CHAIRMAN. Yes.

Mr. LOVETT. That operated in the States of Utah and Nevada and Idaho, Montana, and extending a short way into Oregon. I am not sure it controlled, prior to the receivership, the lines of the Oregon Railroad & Navigation Co. in Oregon and Washington. I was not connected with the company at that time, and am therefore not as familiar with those old historical facts as I might have been.

The CHAIRMAN. It now controls the lines to which you have last referred?

Mr. LOVETT. Yes.

The CHAIRMAN. Now, since the Utah incorporation, has the area of its operations been contracted or enlarged?

Mr. LOVETT. Been enlarged.

The CHAIRMAN. In what States?

Mr. LOVETT. In all the States in which it operates, except in Missouri and Iowa, where it has merely terminals, it has been enlarged by the construction of new lines, by the purchase of a few independent lines, and by the construction of various extensions under separate corporations, which were afterwards merged into the main company.

The CHAIRMAN. In how many States does it operate now, outside of the seven to which you just referred?

Mr. LOVETT. Including the seven, it operates in 11 States, and in addition to that, it owns—no, it does not operate in Nevada. It operates now in 11 States, including all of those previously named, except Nevada. It also owns half the stock and half the bonds of the Los Angeles & Salt Lake Railroad Co., which operates in Nevada and California, as well as in Utah.

The CHAIRMAN. That is the road that stretches from Salt Lake City to Los Angeles?

Mr. LOVETT. Yes.

The CHAIRMAN. Have you dropped the operation of any systems or roads during this period?

Mr. LOVETT. No; I should add that before this insolvency of the Union Pacific, through some form of stock ownership with which I am not familiar, because I have never had occasion to investigate it, it controlled the Union Pacific, Denver & Gulf Railroad, and other companies, including the St. Joseph & Grand Island Railroad, which, however, recently it has since reacquired.

The CHAIRMAN. Did it at any time control the Southern Pacific?

Mr. LOVETT. Yes.

The CHAIRMAN. After the organization under the laws of Utah or before?

Mr. LOVETT. Afterwards.

The CHAIRMAN. And the control of the Southern Pacific meant the control also of the Central Pacific, did it not?

Mr. LOVETT. Yes.

The CHAIRMAN. You lost that control through a court decision, did you not?

Mr. LOVETT. Yes. The Supreme Court of the United States held it was a violation of the Sherman Act, and that control terminated on the 1st of February, 1913.

The CHAIRMAN. It is contended now, is it not, that the Southern Pacific is holding the Central Pacific in violation of the Sherman Act?

Mr. LOVETT. It is so contended by the Attorney General.

The CHAIRMAN. And that, I believe, has been decided against the Government in the circuit court?

Mr. LOVETT. So I understand.

The CHAIRMAN. How many shares of ordinary stock, common stock, and how many shares of preferred stock, and what amount of bonds are outstanding?

Mr. LOVETT. May I use dollars instead of shares, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. LOVETT. The total common stock of the Union Pacific Railroad Co. outstanding, by which I mean is owned by the public, is \$222,291,600 par value; of preferred stock, \$99,543,500. The bonds held by the public and issued by the Union Pacific Railroad Co. and its various constituent companies aggregate \$334,629,850.

The CHAIRMAN. What rate of interest, as a rule, do your bonds pay?

Mr. LOVETT. Mostly 4 per cent.

The CHAIRMAN. What rate of interest is paid upon your preferred stock?

Mr. LOVETT. Four per cent.

The CHAIRMAN. And what on the common stock?

Mr. LOVETT. From October, 1906, to 1914 it paid 10 per cent. From 1914 to January, 1916, the regular dividend was 8 per cent. There was an extra dividend during that time, payable in stock of other corporations held by the Union Pacific—a certain number of shares, without stating, I believe, their value. In December, 1916, there was declared, in addition to the 2 per cent quarterly on the common stock, an extra dividend of 2 per cent; and another extra dividend of one-half of 1 per cent, payable April 1, has been declared.

The CHAIRMAN. I observe that your preferred stock bears the same rate of interest as your bonds. What price is your preferred stock quoted in the market?

Mr. LOVETT. It has been quoted for a long time at about 82 per cent of its par value.

The CHAIRMAN. Then, 4 per cent will not hold that at par?

Mr. LOVETT. Oh, no.

The CHAIRMAN. Under present conditions?

Mr. LOVETT. No.

The CHAIRMAN. Does 4 per cent hold your bonds at par?

Mr. LOVETT. No; they are a little under par. They have been for some time. Formerly they were above par—our first-mortgage bonds—because they were savings-bank investments in many of the States and many of our bonds are available as savings-bank investments, and that naturally adds to their price.

The CHAIRMAN. Was your preferred stock issued at par, do you know?

Mr. LOVETT. It was issued in the reorganization following the receivership, and I am not able to say just what it was issued for. It was issued to the reorganization committee along with some common stock and all of the bonds under a plan of reorganization.

The CHAIRMAN. Your bonds were negotiated at a very favorable time in the money market, were they not?

Mr. LOVETT. I so understand. I was not then connected with the company.

The CHAIRMAN. If those bonds were to become due to-day could you dispose of them at the 4 per cent rate at par?

Mr. LOVETT. We could not.

The CHAIRMAN. What rate of interest would they require?

Mr. LOVETT. At this time, in order to realize par for them, we should probably have to increase the interest rate to around 5 per cent.

The CHAIRMAN. Now suppose you should issue preferred stock to-day for par, in order to command par what rate of interest would you have to pay on that?

Mr. LOVETT. I should say—it depends, of course, on the amount. To issue the same amount and with the same rights as the present preferred stock we would have to pay considerably above 5 per cent in order to realize par.

The CHAIRMAN. And if you were to issue a lot of common stock, what rate of interest would be required in the shape of dividends to sustain that stock at par under present conditions?

Mr. LOVETT. Our present common stock is selling from \$135 to \$140. While I am not making any predictions, of course, as to our dividend policy, many holders of the stock expect that extra dividend to continue for a long time, which with the regular dividend makes 10 per cent on the stock. Notwithstanding the 10 per cent dividend, the stock is selling at \$135 to \$140, which, I should say roughly, is yielding about 7 per cent.

The CHAIRMAN. Then, under present conditions, in order to maintain bonds, preferred stock, and common stock at par, there would have to be assurance as to the bonds that they would pay 5 per cent, as to the preferred stock that it would pay 6 per cent, and as to the common stock, that it would pay 7 per cent. Would that be about the relative interest that the market would expect in order to sustain the securities at par with a good road that had an established business and valuable assets?

Mr. LOVETT. I would not say the preferred stock would have to pay as much as 6 per cent. It would have to pay more than 5 per cent. With that modification and with conditions as they exist at this time, I should say your statement was about right.

Mr. ADAMSON. In order that I may understand this, pardon me if I ask you or Judge Lovett. I understand the common stock is sold, and it depends for its dividends on earnings?

The CHAIRMAN. Yes.

Mr. ADAMSON. Now the preferred stock, is the dividend on that, like bonds, limited to the rate of interest specified, or does it participate in dividends?

Mr. LOVETT. It is limited to 4 per cent.

Mr. ADAMSON. It is just like a bond.

Mr. LOVETT. Yes; and is not cumulative. In other words, the bonds must have their interest whether it is earned or not. The preferred stock can not get more than 4 per cent.

Mr. ADAMSON. And will not get that unless it is earned?

Mr. LOVETT. Exactly.

The CHAIRMAN. Preferred stock is generally cumulative, is it not?

Mr. LOVETT. Well, there are all kinds of preferred stock, Senator.

The CHAIRMAN. Not so in yours?

Mr. LOVETT. I should say the majority of railroad stock is not cumulative, but that is a guess. I do not know.

Mr. ADAMSON. The reason I interrupted, the chairman mentioned 7 per cent on common stock and I did not think common stock ever had a specified rate of profit.

The CHAIRMAN. No; but I mean to say in order to maintain it at par there would have to be a reasonable expectation that it would earn 7 per cent.

Now, Mr. Lovett, in considering the question of national incorporation, what is your expectation as to the form that mergers accomplished under a Federal act would take? Would these corporations be likely to be merged within a given region corresponding to the traffic areas that you have evolved in railway management, or would they be likely to be continental in character from coast to coast and from the Lakes to the Gulf? What has been the tendency thus far in the merger and consolidation thus far accomplished in the railway systems of the country?

Mr. LOVETT. The consensus of opinion of railroad executives who have been considering this matter, according to my understanding of it, is that the rule with respect to consolidation of competing lines would continue with only slight modification; that whenever a case was presented where the public interest would be better subserved by the merging of two lines which were slightly competitive than by their continued separate operation and the Interstate Commerce Commission, or whatever commission Congress authorized to pass upon the matter, would find that fact and approve consolidation in the public interest, that it would be authorized.

I have never heard any suggestions that there will be any wholesale consolidation; that certainly there never would be any consolidation of large systems, but we all believe that there never will be any more separate railroad construction in this country. I say, we all. I am sure the majority of the railroad executives believe, and I have never discussed it with one who did not believe, that the new railroads have got to be provided by the existing systems. That may be either from the building by the systems themselves or by absorbing some of the roads that had been built independently. Some-

times the only way men can be convinced that the railroad business is not always velvet is to let them try it, and men do make an effort and they always will, and you will find enterprising men who will undertake to build a new railroad. But we who have been dealing with the problem believe that generally those efforts will fail financially—sometimes they do not—and they will then drop into some of the large systems.

So I have expressed the opinion that the real new construction, the substantial construction of new lines, will probably have to be by the existing systems or their successors, and in the expansion of those systems will be consolidations.

Personally I am a strong believer in the competitive principle in railroad business, not in rates. I do not believe in competition in rates; it is not possible. You can not have competition in rates without rebates and discriminations. But you can have competition in service and facilities, and personally I believe in that because I believe it will promote railroad development and that the abolition of all competition in facilities and service would tend more or less to stagnation than development.

The CHAIRMAN. Do you find as a matter of experience that that competition in facilities and service, not in rates, has been secured under the consolidations that have thus far taken place?

Mr. LOVETT. Certainly it has.

The CHAIRMAN. I observe that the consolidations that have thus far taken place have been mainly regional; that is to say, the great New York Central system, the Pennsylvania system, the Baltimore & Ohio system, and the Chesapeake & Ohio system, are mainly confined to the region north of the Ohio River and east of the Mississippi and of the Great Lakes and of Chicago. And that the consolidations that have taken place toward the South have been south of the Ohio River and south of Washington, and that the other consolidations that have taken place are west of Chicago and of the Mississippi River. Is that the fact? How many regions do the railroad men consider there are now, or traffic areas?

Mr. LOVETT. Five, are there not?

The CHAIRMAN. I mean in the large. There is one traffic area, I believe, that includes two or three subordinate ones. Would you give the five or their boundaries?

Mr. LOVETT. I could not, Senator. I know, in a general way, of those regions, but I do not carry the boundaries in my mind.

The CHAIRMAN. Have you observed, as a matter of fact, whether the consolidations thus far effected have been within the boundaries of these particular traffic areas, and have not expanded to any material degree beyond them?

Mr. LOVETT. I can not say whether it is true, but if it is true I think it is a coincidence rather than the effect of traffic regions. Each system that extends through absorbing another line is actuated by the extension of its traffic influence, and that is done without any regard to the traffic territories. That is a system that is worked out by the commercial interests of the country and by the traffic men. I am not very familiar with it.

I should like to add to that, Senator, that I am not familiar with the railroads and the railroad relations in the southeastern territory and in the New England and northeastern territory as I am.

with the conditions in the West and Middle West and in the trunk-line territory; as I have had no connection, or very little connection, with the railroads in the southeastern States, and none with the railroads in the New England States, outside of the New-York Central, of which I am a director.

The CHAIRMAN. The Union Pacific Railroad not only owns railroads, but also holds the stock of subsidiary corporations, does it not?

Mr. LOVETT. Yes; and also the stock of corporations which are not subsidiary, but which it holds practically as an investment.

The CHAIRMAN. The laws of Utah permit corporations chartered under those laws to hold the stock of other corporations?

Mr. LOVETT. Yes. For the Union Pacific is a financial organization as well as a railroad company.

The CHAIRMAN. Yes. Taking the question of national incorporation, and considering the natural inclination and disposition of the States to maintain the present form of State incorporation of railways, would it not serve the purpose you have in view, in perfecting the organization of our railway system, if we should have a national incorporation act, which would provide only for holding shares of State corporations owning the railways?

Mr. LOVETT. It would not only fail to accomplish the object that we have in view, Senator, but I can not see that there would be any value in such a corporation. The Union Pacific, under its charter, arising under the Utah law, has that power; and the Southern Pacific, for instance, has the power to own the stock of Texas railroad companies; but the State that creates the corporation and the State in which the railroad is situated, absolutely controls all of the corporate functions of the company that owns and operates the railroad. It does not remedy the difficulties that I have been discussing at all.

The CHAIRMAN. But from the standpoint of the public interest do you not think that the corporation which is organized for the purpose of unifying individual railroads organized under State laws would better serve the public interest if that corporation should be organized under a Federal charter and controlled by the National Government, which has an interest in all the States, rather than by a single State, which has no interest to serve beyond its own boundaries and no public interest to protect beyond its own boundaries?

Mr. LOVETT. For a corporation merely to act as a holding company, to acquire and hold the stock of other companies, I am wholly unable to see where the public or anybody else would be benefited by a Federal corporation. Possibly it might benefit the corporation to the extent that such a corporation could not be taxed without the consent of Congress, and the securities held by it might escape taxation to which they are now subject in the State which creates the corporation that constitutes the present holding company; but I can not see where a corporation created by Congress would meet any of the difficulties of the present situation confronting the railroads or be of any value to the public or anybody else, except possibly on the question of making a little clearer the matter of taxation.

The CHAIRMAN. Do you not think it would be the natural inclination of the managers and controllers of a number of railroads which might deem it desirable to consolidate to go to the State that had the

least restrictions upon the corporate powers of corporations organized under its laws, and is not that to the public disadvantage?

Mr. LOVETT. I do not see that the public cares anything about that, so long as the State that creates the railroad corporation has power over that corporation and can regulate its railroad and all of its corporate functions.

Mr. ADAMSON.—In the one minute remaining before 1.30 I move that we adjourn until 10 o'clock to-morrow morning.

The CHAIRMAN. If there is no objection, we will adjourn until that hour—10 o'clock to-morrow.

(Whereupon, at 1.30 o'clock p. m., the joint subcommittee adjourned until to-morrow, Wednesday, March 21, 1917, at 10 o'clock a. m.)

# INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT CONTROL AND REGULATION.

WEDNESDAY, MARCH 21, 1917.

UNITED STATES SENATE,  
JOINT SUBCOMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The joint subcommittee met at 10 o'clock a. m., Senator Francis G. Newlands (chairman) presiding; also Vice Chairman William C. Adamson.

Mr. ADAMSON. Mr. Chairman, before the witness proceeds I would like to raise one point. I do not know that it need be made of record. It is evident that we can not always have all the members present, and sometimes we do not have a quorum present. I should just like to have an understanding with the committee. If there are members of the committee present, whether it is three or four or five or one or two, shall we go on with the hearing always?

The CHAIRMAN. If there is no objection, that order will be made.

Mr. ADAMSON. And whatever members of the committee are here when the times comes, at any time, they need not wait for a quorum, but go ahead with the examination?

The CHAIRMAN. Yes.

I will state that I am called to San Francisco on a very important matter, and I shall be obliged to leave this evening, to be away for about two weeks, and during my absence Judge Adamson will preside.

Mr. ADAMSON. The suggestion I made, Mr. Chairman, was in view of the transaction of business, because it is impossible for all of us to be here always, and I see no reason why we should have to have a quorum in order to take evidence.

The CHAIRMAN. Judge Lovett, are you ready to proceed?

Mr. LOVETT. I am ready, Mr. Chairman.

## STATEMENT OF R. S. LOVETT—Resumed.

The CHAIRMAN. Judge Lovett, I refer you to part 5 of the hearings, page 288, and the part I particularly refer you to is the quotations from a bill for the national incorporation of railroads, introduced by me in 1905, and covering the questions of capitalization, taxation, State police and State rates, acquisition of State railroads, accident and insurance fund, board of conciliation, dividends, jurisdiction of suits by and against railway companies, etc., being the

leading provisions of the act referred to. Have you the hearing before you?

Mr. LOVETT. I have a copy before me, Senator.

The CHAIRMAN. First, with reference to the capitalization, in section 3 of the bill referred to, provision is made for the issue of bonds and stocks, the latter presumably with the usual par value. Your suggestion is that instead of having shares at par value, the shares should simply represent a certain interest in the assets of the corporation after the debts are paid?

Mr. LOVETT. Yes; I deem that very important, Senator.

The CHAIRMAN. The advantage of that, I imagine, would be that it would do away with the necessity of the valuation of the property of a railroad owned by a State corporation in transferring it to a national corporation; would it not?

Mr. LOVETT. I had not thought of that as one of the advantages, Senator. I stated in my main testimony the principal advantages which I considered resulted from the issue of capital stock without par value.

The CHAIRMAN. Would that be an advantage—that it would facilitate the transfer of property from a State corporation to a national corporation?

Mr. LOVETT. I do not believe that would be. I think the conversion of State corporations into national corporations would result in the same way, and the same proceeding would be taken, whether the stock had par value or not. My idea of the most convenient and practicable method of transferring a State corporation to a Federal corporation would be to leave the amount of capital stock, the debts, everything, between the corporation and its shareholders and the corporation and its creditors, and all questions of liability, and all questions as to the validity of any of the securities wholly unaffected. The corporation would file with the Interstate Commerce Commission or such other department of the Federal Government as Congress should designate a certificate of incorporation or reincorporation, somewhat in the form of the ordinary certificate of incorporation, specifying the amount of its capital, the number of shares into which it is divided (I would not state any par value), the railroads that the corporation was at the time operating, the number of its directors, location of the principal office or domicile of the company, and other matters that are usual in certificates of incorporation. Upon the filing of this certificate, or upon a given day, the corporation would cease to be a State corporation and would become a Federal corporation, with the powers specified in the act of Congress providing for the incorporation. And that act, I assume, would provide that the amount of capital stock, the indebtedness, and all other corporate relations should remain as they were, and all questions as to the validity or invalidity of any obligation or any security should remain unaffected by the change.

Now, if any change in the corporate enterprise is found to be necessary, if any increase of the capital stock, a reduction of the capital stock, or an extension of the lines owned at the time, or any other change is considered advisable, or any consolidation contemplated, let all that come afterwards by an amendment of the articles of incorporation, as may be provided for by Congress. Every consolidation or change afterwards should be passed upon by the Inter-

state Commerce Commission or some other Federal commission. If you attempt to change any of the relations, the intercorporate relations or internal relations of a corporation, in effecting the transfer from State to Federal authority, there will be endless complications and room for litigation and controversies; whereas my idea is that every railroad corporation in the United States on a given date should cease to be a State corporation and should become a Federal corporation, with precisely the same powers as every other Federal corporation.

The CHAIRMAN. Take the Union Pacific, whose ownership consists partly of the physical properties of railroads and partly of the shares and bonds of State railway corporations. What action would you take with reference to the latter—the shares and the bonds?

Mr. LOVETT. Each constituent company of the Union Pacific system would take precisely the same proceeding. The Union Pacific Railroad Co. would become a Federal corporation; the Oregon Short Line Railroad Co. would become a Federal corporation; the Oregon Railroad & Navigation Co. would become a Federal corporation, all at the same time. The stocks would be undisturbed; they would stand as they are.

The CHAIRMAN. I see. Then the Federal corporation would be both an owning and a holding corporation, just as the Utah corporation is at present?

Mr. LOVETT. Precisely; and if it was deemed advisable at any time to eliminate some of these corporate organizations and merge them the act should provide for consolidating corporations under the approval of the Federal commission, and that thereafter the three companies, or any number of them, might be consolidated, just as they might to-day, to the extent authorized by the Federal act.

The CHAIRMAN. And in that event would it be your expectation that in the end the Union Pacific Railroad, instead of being both an owning and a holding corporation, would be simply an owning corporation, the properties of the subsidiary corporations being transferred to it and stock issued for it?

Mr. LOVETT. I think the Union Pacific, under the plan I have in mind, would have no more and no less corporate powers than every other railroad company in the United States. Such powers as it may have under the State corporation that would not be covered in the Federal act of incorporation would cease to exist.

I think the effect of Federal incorporation would be to largely eliminate holding companies.

The CHAIRMAN. But it would be done by a gradual process?

Mr. LOVETT. Yes. It would be impossible to do it as part of the process of converting a State corporation into a Federal corporation, because, in the first place, I fancy the Federal Government would want to scrutinize some of these organizations to see whether or not they embraced consolidations or embraced control that might be against the policy of Congress as indicated by the trust laws; and Congress, I take it, would not want to provide for practically an automatic consolidation without knowing what was in the bag.

The CHAIRMAN. Yes.

Mr. LOVETT. And so, after requiring all existing State corporations to become Federal corporations, provision should then be made under such restrictions as Congress may specify in the act for such con-

solidations as were to the public interest, and which should be approved by the Federal commission.

I am quite sure that a great many holding companies have been created for the purpose of establishing systems that could not be established by direct ownership. For example, the Texas situation—that seems to afford a precedent for almost everything in the way of railroad regulation—the Southern Pacific's continuous line from New York via New Orleans and Galveston to the Pacific coast, can not exist except by reason of the fact that the Southern Pacific is a holding company and can take the stock of the Texas companies, because the laws of Texas prohibit any foreign corporation from owning or operating a railroad within its territory.

The CHAIRMAN. The Union Pacific is operating in 11 States?

Mr. LOVETT. Yes.

The CHAIRMAN. In how many of those States does it hold the physical properties—or own them, rather?

Mr. LOVETT. Iowa, Missouri, Nebraska, Kansas, Colorado, Wyoming, and Utah—seven.

The CHAIRMAN. Seven?

Mr. LOVETT. Yes.

The CHAIRMAN. Now, as a matter of practical administration, would you prefer to own the physical properties of the corporations of which you now hold the stock or would you prefer the present system?

Mr. LOVETT. As a matter of operation, I should prefer the ownership of the physical properties, but there is no reason why we could not do that under the existing State laws. Those States permit the consolidation of these three constituent companies. There have been certain sentimental reasons, however, that have delayed consolidation in the case of the Union Pacific. I need not go into it very far, but I do not want the Union Pacific to appear more a Northwestern line than a California line, and for that reason we have held the Union Pacific Railroad proper as being a main line from the Missouri River to Ogden, Utah, and the lines in the Northwest as subsidiary companies. That is largely sentimental, however, and there is not much importance to it, and the probabilities are that we will merge those three companies, because now we have to pay a double income tax. The Oregon Railway & Navigation Co's stock is owned by the Oregon Short Line, and the Oregon Short Line's stock is owned by the Union Pacific. If the Oregon Railroad & Navigation Co. makes a dividend it pays it to the Oregon Short Line, and the income tax on it, and then the Oregon Short Line pays its dividends to the Union Pacific, with an income tax on that, and then the Union Pacific pays an income tax also.

The CHAIRMAN. That makes three taxes?

Mr. LOVETT. Yes; and it is very burdensome. We will be forced to consolidate those lines if that tax continues.

The CHAIRMAN. Referring to the tentative incorporation act which I introduced in 1905, section 17, you will observe, provides:

National corporations duly organized under this act are hereby declared to be military and post roads and instrumentalities for the regulation of interstate commerce. The franchise, stocks, bonds, fixed evidences of indebtedness, operations, and traffic, and the corporation itself, shall be exempt from all taxation by any State or Territory, other than as provided in this act, but the property of such corporation, including its right of way, track, real estate,

stations, office buildings, and equipment, shall be subject to assessment and at such average percentage of their actual value as shall be customary with reference to other property in such State or Territory. In lieu of such tax any State or Territory may impose a tax not exceeding four per centum on such proportion of the gross receipts of such corporations as the number of miles of track in such State or Territory bear to the total miles of track operated by such corporation. In estimating the miles of track, each mile of second track shall be regarded as equal to one-half mile of track and each mile of third or fourth track or siding shall be estimated as equal to one-third of each mile of main track. For the purpose of computation by each State the Interstate Commerce Commission shall certify to taxing authorities of each State or Territory the gross receipts for the preceding year of the total mileage, as aforesaid, and the proportion of such total mileage operated in each State or Territory.

Now, I wish to ask you, with reference to that, whether you would regard that as a fair scheme of taxation?

Mr. LOVETT. It is probably fair, Senator, but I think it would be unwise.

The CHAIRMAN. In what respect?

Mr. LOVETT. I believe the power of the States with respect to the taxation of railroads would better be left in the hands of the States. A perfectly just and fair system would be to have every railroad treated as a unit and to have its value apportioned between the different States according to mileage, and perhaps have some commission or some tribunal determine the value of the unit and apportion it on the basis of track mileage. I would not treat a double track or additional track as half a mile of track. I would apportion it on track mileage—yard tracks, terminals, and every track—and let the State fix its own rates of taxation rather than fix a tax based upon the gross earnings, because rates of taxation are higher in some States than others and there is a greater need of taxes in some States than in others. So, while I believe it would be a just system to have a national valuation of a single railroad as a unit and let the commission certify that valuation, yet leave it entirely to each State to determine its own form and rate of taxation. That, however, I regard more as an ideal than as a present practical object. I think that if you federalize these corporations and establish a just system of regulating their securities, their financial operations, their rates, and their consolidations, and operations of that character, it will be enough to undertake in one piece of legislation. I believe it would be wise to let the question of taxation rest as it is now—in the hands of the States—at least until we smooth out some of the difficulties that may be encountered in the other changes.

The CHAIRMAN. You would expect, then, a better system of taxation to come by a process of evolution?

Mr. LOVETT. And study and development.

The CHAIRMAN. Yes. You realize, do you not, now, the complicated and multifarious methods under which taxation is now imposed on railroad properties and shares and bonds?

Mr. LOVETT. I do, and it is very serious.

The CHAIRMAN. You would regard it as a step in the direction of recommending railway securities at lower rates of interest, to secure some definite and scientific method of taxation, would you not?

Mr. LOVETT. Yes; it is desirable. It is one of our problems, and it is a serious one; but we have so many others that are more urgent

that this does not seem to us, relatively, as important as, perhaps, it really is.

The CHAIRMAN. As it is now, the shares of subsidiary corporations in the hands of holding companies are subject to taxation in many of the States, are they not?

Mr. LOVETT. Yes.

The CHAIRMAN. As intangibles?

Mr. LOVETT. Yes; or as tangibles representing the property.

The CHAIRMAN. Are they classed as intangibles or tangibles, as a rule?

Mr. LOVETT. I do not think there is any rule for taxation in this country, Senator. Some effort is made to tax stock held by a holding company in some places, as they would tax it in the hands of an individual—property owned by him—and the situs of which is the domicile of the owner. In other States it is called “intangible.” That is a very liberal term, and it is frequently employed when some more exact term is not available. It is dealt with in various ways in different States and localities.

The CHAIRMAN. Have you found, in your experience in the State of Utah, that there has been any effort to tax the shares and the bonds held by your company?

Mr. LOVETT. No.

The CHAIRMAN. In subsidiary corporations?

Mr. LOVETT. No.

The CHAIRMAN. Do you know of any great holding company in which an attempt has been made to do that?

Mr. LOVETT. When I was connected with the Southern Pacific Co. some years ago—the Southern Pacific Co. is a Kentucky corporation—there was some litigation over that in the State of Kentucky. An effort was made to tax the shares of the subsidiary companies of the Southern Pacific Co. in Kentucky, although none of them was in Kentucky.

The CHAIRMAN. Was that successful?

Mr. LOVETT. I forget the disposition there. There was litigation over it. For instance, in one case I know they attempted to tax in Kentucky the steamships operated by the Southern Pacific between New York and Galveston and New Orleans, and there was litigation over that, and I think it went to the Supreme Court, but I do not remember just what the result of it was.

The CHAIRMAN. Now, assuming that all the physical property of a subsidiary corporation is assessed and taxed in the various States in which that property lies, and then assume that the shares in those subsidiary corporations, held by a holding company, are also assessed and taxed by the State under the laws of which the holding corporation is organized; that would be double taxation, would it not?

Mr. LOVETT. It goes even further than that, Senator. In some States they proceed to tax the shares of the holding company held by the stockholders, which makes a tax three times upon the same property.

The CHAIRMAN. Yes.

Mr. LOVETT. That happens.

The CHAIRMAN. Yes. Now, in some of the States, these so-called intangible shares and bonds are taxed at the usual rate imposed upon all property, are they not?

Mr. LOVETT. I think so, though usually the States in which the holding companies are created do not have such taxation. I fancy that is the reason why some of the States are preferred.

The CHAIRMAN. Yes.

Mr. LOVETT. I think those States which have the fairest tax laws do not tax the stock of such corporations.

The CHAIRMAN. And naturally railroad organizations seeking a home for a holding company would look up the State that had the fairest tax laws, would they not?

Mr. LOVETT. I should think so.

The CHAIRMAN. And with a view to escaping these double and triple burdens?

Mr. LOVETT. Yes.

The CHAIRMAN. That might be imposed?

Mr. LOVETT. Yes. Of course the fair system of taxation is to tax the property represented by the stock to its full value where it is located.

The CHAIRMAN. Yes.

Mr. LOVETT. And then the stock and bonds ought not to be taxed.

The CHAIRMAN. Yes.

Mr. LOVETT. But that is an ideal that I do not expect to see accomplished.

The CHAIRMAN. That is what I had hoped to accomplish by this act, if it is ever enacted, my idea being that if that were done the public itself would get the benefit of a reduced rate of taxation upon railway securities.

Mr. LOVETT. Yes; it is a very desirable system, and it would be a just system, but I do not have much hope of seeing that succeed. I think probably, in time, the people who make the tax laws will realize that any State that indulges in double taxation will probably keep as nonresidents people who own very much corporate stock and shares and who have their money invested in corporate securities returning 4 or 5 per cent. They will not seek residence in those States. Possibly he is an undersirable citizen, but he will not seek residence in a State or in a town where they will tax his securities at full value, and thus take one-half of his income or even more. That is the effect of the present system. Those States that consider that the property itself has been taxed enough and do not tax the securities or stock, will be preferred by those who have their means invested in corporate securities.

The CHAIRMAN. Now, section 18 of the bill referred to has to do with the police powers and State rates. It reads:

Nothing herein contained shall be construed as interfering with the police laws of any State regarding railroads incorporated under this act and operating in such States, nor shall anything herein contained be construed as affecting the right and power of each State to regulate purely State commerce on railroads organized under this act. But the Interstate Commerce Commission may hold conferences from time to time with the regulating power of any State with a view to such harmonious adjustment and regulation of State commerce and interstate commerce as will protect the public against abuses or extortion, and the railroads against inadequate returns upon their investment, and promote the efficiency of such corporations as common carriers.

Now, with reference to that, I observe your contention seems to be that these national corporations should be relieved, either wholly or

in part, from the exercise of the State police powers, and particularly from the power of fixing the rates upon purely State traffic.

Mr. LOVETT. I did not mean to be understood as going so far as to say that the Federal corporations should be relieved from the State police power in purely local matters. It is impossible to define police power. We believe that in purely local matters the corporation should remain, as it is now, subject to State laws, but I do not regard the making of intrastate rates as a local matter. We consider that the rate situation and rate problem should be dealt with as a whole, and in order to make effective interstate rates and avoid discriminations, the rate-making power ought to be unified, and that the Federal Commission should make the intrastate as well as the interstate rates. As a matter of fact, in most of the States the people of each State are vastly more interested in interstate rates than in State rates; most of their business is handled on interstate rates, which is already vested in the Federal Commission. So it is not going very much further to give that same commission the power to regulate intrastate rates, the minor part of the business the people are interested in, provided, of course, in the form of regional commissions or otherwise there are tribunals sufficient in number to readily hear and determine all complaints the people have in respect to rates.

Now, all other local matters, or, rather, all local matters—because I contend that intrastate rates are not local matters—we think the regulating power should be left with the States, as now.

The next feature of this provision, Senator—if I may say a word about it—which you have just read, requiring the cooperation of the State and interstate commissions: I do not understand there is any constitutional warrant or even theory in our form of government for cooperation between the States and the Federal Government. Either one or the other is exclusive. On national matters the Federal authority is exclusive. I believe it would be a very great mistake to divide the responsibility with respect to rate regulation between the Federal commission and the State commissions. Delay is one of the greatest evils in any system of governmental regulation of rates, because prompt action in rate regulation is essential to the public. To try to bring about a system or form of cooperation between a Federal commission and a State commission would greatly multiply the evils resulting from delay and besides being, according to my view of it, a departure in our system of government, which, according to my conception of it with respect to legislative matters, is exclusive either in the States or in the Federal Government.

The CHAIRMAN. Are you aware that now under the existing system it has been the practice of the Interstate Commerce Commission to bring together the State commissions at an annual conference in Washington, in which a committee from the Interstate Commerce Commission has participated, so far as possible as debate is concerned, but without vote? Do you not think that those conferences have been beneficial in bringing about some harmony of view and of action between these sovereigns, the national sovereign on the one hand and the State sovereignties on the other?

Mr. LOVETT. They have been successful socially, I think, Senator. The CHAIRMAN. But not in any practical way?

Mr. LOVETT. I am not prepared to say that they have accomplished anything in furtherance of wise regulation.

The CHAIRMAN. Well, you realize, of course, that, so far as the Constitution is concerned, it reserves in the States the regulation of purely State commerce, just as it grants to the National Government the regulation of interstate commerce?

Mr. ADAMSON. We are glad to have that indorsement of the Constitution from the chairman.

The CHAIRMAN. Yes; I have never questioned that at all. Now, my main idea has been that here has been granted to two sets of sovereignties control over parts of the whole, and that as the jurisdiction of the national sovereignty over interstate commerce was undoubted and the jurisdiction of the States over State commerce was undoubted, and both had to be conducted by the same corporate instrumentality, that it would be wise for them to get together by some system of comity rather than to force control by the absolute absorption of the jurisdiction of the one sovereign by the national sovereign.

Mr. LOVETT. I do not understand, Senator, that there is more than one sovereign. I take it that the Federal Government is the sovereign with respect to all interstate matters.

The CHAIRMAN. Undoubtedly.

Mr. LOVETT. And I take it that the State is the sovereign with respect to the purely State matters, subject to certain limitations as to personal rights. But the question arises as to what is purely a State matter. Now, I understand that wherever Congress has jurisdiction of the subject it has all the power necessary to make that jurisdiction effective, and if any State right is inconsistent with the proper exercise of that power of Congress the State power yields, because the Federal power is paramount. So I do not understand there is any conflict of authority. I do not agree at all that there are differences between the State and Federal Governments to be reconciled by negotiation or treaty or otherwise. Either one or the other has the authority, and it is not a matter for negotiation. That is why I say I do not understand there is any theory in our form of government that admits of a case where it is necessary for the State and Federal Governments to come to an agreement. The Constitution settles that.

The CHAIRMAN. And I presume your contention is that the United States courts have practically settled the question in the manner you suggest?

Mr. LOVETT. That is my view of it.

The CHAIRMAN. That was not so apparent in 1905, when this bill was framed. I believe those decisions have been subsequent to that time, have they not, in the main?

Mr. LOVETT. I think they are very old, Senator. I do not remember when they started, but probably it has been amplified, been made clearer since 1905 through new cases that have arisen. But I think that always has been the theory recognized by the Supreme Court.

The CHAIRMAN. But I mean to say it has only been practically applied by the Supreme Court to these railroad cases within the last 10 years, has it not?

Mr. LOVETT. I do not know just when it was first applied to railroad cases. It is a very old principle.

The CHAIRMAN. Oh, yes; we admit that.

Mr. LOVETT. But there have been new applications in recent years.

Mr. ADAMSON. It is the same old constitution we have had all the time.

The CHAIRMAN. Now, you say that the interstate traffic is on the average about 85 per cent?

Mr. LOVETT. That varies greatly, Senator, in different States.

The CHAIRMAN. But throughout the United States would it not be safe to say the interstate traffic is about 85 per cent and the State traffic about 15 per cent?

Mr. LOVETT. No; I would not say that, because——

The CHAIRMAN. What would be the relative percentage?

Mr. LOVETT. I know what it is on the Union Pacific; the interstate freight traffic, as I stated here is in effect 88 per cent of the total freight revenue, and of the revenue from passenger traffic 68 per cent is derived from interstate traffic. In other States, particularly States on the ocean, say like Texas, for example, it is less. Texas, because of its vast area and because much of the commerce goes to the Texas ports for export, has a very much larger percentage of intrastate traffic than most States. In the Union Pacific territory, however, much of the traffic that originates on the line goes entirely off the system, seeking markets in the East or in the West, and much of the traffic that has destination on our lines originates in the East off the line. In our territory perhaps the percentage of interstate traffic is larger than in most territories, though the condition of the Union Pacific may be fairly representative of the Middle West. But along the Gulf coast, particularly in large States, the percentage of intrastate traffic is perhaps larger; I know it is in Texas, and probably it is in California.

Mr. SIMS. Can you state approximately what it is in Texas?

Mr. LOVETT. I had occasion to deal with that subject a number of years ago in a litigation with the Texas commission, Judge Sims, and I can speak only from memory. My recollection is it was approximately 40 per cent on the line I dealt with, which is a north and south line, the Houston & Texas Central, running from the northern boundary of the State to the Gulf. Something like 40 per cent of the traffic, freight and passenger, of that line was intrastate. That would not be true, however, of some of the other lines, like the Texas & Pacific, for example, which carries its business to New Orleans rather than to the Gulf at Galveston. It would not be true of a number of other lines, but I should say that the intrastate traffic of most Texas lines would be probably around 25 per cent. But bear this in mind in considering Texas: She allows no foreign corporations to operate in that State. She does not allow corporations to consolidate with corporations of other States. They are all local except the Texas & Pacific, and I am dealing only with the Texas division or section of the property.

The CHAIRMAN. Now, Judge Lovett, the percentage of State traffic being so small as compared with the interstate traffic, why is it desirable to interfere with the regulation of that traffic by local commissions when the power exists in the United States courts of annulling the action of the local commissions if it unduly burdens or impedes interstate traffic?

Mr. LOVETT. First, as to the relative importance of the intrastate traffic, I do not know anything, Senator, that is more far-reaching in its disturbance than a small rate cut. A rebate will throw the traffic situation of a vast territory out of line, something apparently of small importance. Suppose a certain product is produced in a certain State and the State cuts that rate to a port on the border of that State, that product is competing with a like product in many other States and on other lines. The shippers of that product, suffering from this discrimination in favor of the State rate, will appeal to the traffic officers serving their territory and say, "You must put me on an equality; you have got to remove this discrimination," and they will cut the rate and put him on an equality. We have seen that many times in Texas. Not so much of recent years, but in the early days of the Texas commission they would make a reduction in the rates on grain, for example, that would apply to the grain-growing districts of northern Texas. Lines from Kansas, Oklahoma, and Nebraska would say, "We have got to protect our shippers and meet that rate." Take a jobber's rate from a place like Dallas or Fort Worth. Jobbers of those cities are in competition with jobbers of St. Louis, Chicago, and Kansas City. If the Texas commission reduces the rate on certain goods, that discriminates against and puts the St. Louis, the Kansas City, and the Chicago jobbers in an unfair position, or what they consider to be an unfair position, and they demand of the lines extending to Texas to put them on an equality, and they generally do it. And we have seen in the Shreveport rate case what a disturbance a State commission can create. The Texas commission wanted the jobbers of Dallas and Houston to do the business rather than Shreveport jobbers. In other words, they wanted to shut the Shreveport jobbers out of Texas. They made a system of rates to do it, and demanded of the railroads that they maintain their interstate rates from Shreveport to Texas points at a certain figure. The commission then cut the State rate so as to practically exclude the Shreveport jobbers from doing business in Texas much nearer to Shreveport than Dallas or Houston. That is not an unusual performance for the Texas commission.

Then we frequently see, in the matter of interstate rates, where a State will cut a passenger rate. A man can buy a ticket from Chicago to East St. Louis for something like \$1.50 less than he can buy a ticket from Chicago to the city of St. Louis, just across the river. That matter, I believe, has been before the commission or is in litigation.

But by making these rates—rates within the State—interstate rates can be dislocated and disarranged. Discriminations will be built up. We have a case of our own. The Nebraska commission established a system of local rates that enabled the Omaha jobbers to practically shut out the jobbing interests of Council Bluffs, across the river, and to shut out St. Joseph, Mo. I could give almost any number of illustrations; but I do not think it will be denied that the State commissions are doing that right along. We have in Kansas, in Nebraska, and in many other States, a 2 cents a mile passenger rate for State business, whereas the Interstate Commerce Commission has made higher rates—24, 2½ cents, or something like that.

When the Interstate Commerce Commission in the early days of the European war gave these eastern lines an increase in rates be-

cause of their financial distress—I understood at the time—the Pennsylvania commission, immediately following the increase made by the Interstate Commerce Commission, made a cut in the coal rates to tidewater points in Pennsylvania practically sufficient, or about sufficient, to absorb all the increase granted by the Interstate Commerce Commission to Pennsylvania lines—I do not mean the Pennsylvania Railroad.

So it is the experience with the activity of the State commissions purely from the local point of view that satisfies railroad men that it is impossible to maintain any rate adjustment that will prevent discriminations unless the rate-making power is unified in a single control.

MR. ADAMSON. If the chairman will pardon me, you referred to that Pennsylvania coal matter. Was that case not similar to the trouble in Texas, where you had so much trouble about the Shreveport case?

MR. LOVETT. I am not sure of the circumstances. I only know, Judge Adamson, in a general way, that they did make a reduction. What the motive was I do not know.

MR. ADAMSON. The coal mines all being in the State of Pennsylvania?

MR. LOVETT. I do not know, but it may have been to preserve a differential, or it may have been simply to reduce—

MR. ADAMSON. I do not speak of the motives; I speak of the case presented for consideration by the Commerce Commission to the court.

MR. LOVETT. I am not familiar with the circumstances. The point that struck me was that the Interstate Commerce Commission, having allowed an increase to relieve financial distress, the State commission had made a reduction, as I was told, about sufficient to absorb the increase allowed by the Interstate Commerce Commission.

THE CHAIRMAN. And your contention is that we should positively legislate upon that subject?

MR. LOVETT. Yes.

THE CHAIRMAN. And indicate by our action that the State commissions are not to make State rates at all?

MR. LOVETT. Yes; my idea is that the rate-making powers should be vested exclusively in the Interstate Commerce Commission which now controls the rates for the great bulk of the commerce of the country.

THE CHAIRMAN. Don't you think it would work as well to leave it as it is now? The Supreme Court has practically determined that although the Constitution vests in the National Government jurisdiction only over interstate commerce and reserves to the States jurisdiction over the State commerce, that the National Government is practically the lord paramount and they are not equal sovereignties, and that wherever the action of the State is contradictory to that of the Nation, or involves a burden upon or an impediment to interstate commerce, that the State action falls. Now, why is it not better to leave that situation as it is now, under the decision of the courts?

MR. LOVETT. Because, Senator, Congress can not escape the responsibility. The power to regulate interstate commerce is vested

in Congress, and, if the State authority to make rates is to be superseded, it is only because Congress will determine that in order to make its interstate regulation effective it must take exclusive jurisdiction of the subject. I understand the Supreme Court has held, in the Minnesota Rate case, that the State rates there were not void, because Congress had not acted; that Congress had not determined to take control of the whole subject—had not occupied the field, to use one of the Supreme Court's expressions—of regulation. If Congress had acted, had conferred upon the Interstate Commerce Commission the authority to fix these rates, and the commission had fixed them, then the State rates would have been invalid; but that had not occurred.

Now, in the Shreveport case the court determined that Congress had conferred upon the commission power to prevent discrimination, and that if the commission acted, then that would be an exercise of the power of Congress that would be exclusive.

Mr. ADAMSON. Is not this about the situation the courts have left the matter in: That Congress' action draws the line and the States can not help themselves?

Mr. LOVETT. That is as I understand it.

Senator CUMMINS. Mr. Chairman, may I ask a question there?

THE CHAIRMAN. Certainly.

Senator CUMMINS. Mr. Lovett, do you believe it is legally possible for a State rate, which is reasonable for the service rendered, to be a discriminating rate?

Mr. LOVETT. Yes, Senator.

Senator CUMMINS. That is, a rate from Dallas to some point in the interior of Texas, applied to State traffic, in fact, and not simply in name, although it is a reasonable charge for the service rendered by the railroad company, can locally be a discriminating rate, as compared with an interstate rate, from some point outside of the State of Texas into Texas?

Mr. LOVETT. I have no doubt of that, Senator.

Senator CUMMINS. The effect of it would be, then, that the State rate must be either more or less than reasonable in order to avoid discrimination.

Mr. LOVETT. It depends entirely, Senator, on the question of reasonableness. I do not understand that there is any rule for determining the reasonableness of a rate. A rate——

Senator CUMMINS. It is the value of the service.

Mr. LOVETT. Well, that is——

Senator CUMMINS. I understand that is the general rule.

Mr. LOVETT. I understand that there is no rule. The situation, for instance, is this, to illustrate my answer to you: A given rate for a given service, we will say, of 10 cents a hundred, might be confiscatory, and that would be an unreasonable rate, and would be contrary to the Constitution. A rate for the same service, that is 20 cents, might cover the cost of service and might allow, we will say, 1 or 2 per cent—a small return to the carrier. A rate of 25 cents, we will say, for the same service, might afford a return of 4 or 5 or 6 per cent. Now, there is a wide margin, after you get above a confiscatory rate—there is a wide margin between a confiscatory rate and a rate that everybody will say is unreasonably high. That might range anywhere, we will say, from 10 cents a hundred to 50 cents a hun-

dred. Everybody might agree that 10 cents a hundred will be too low, and everybody might agree that 50 cents a hundred will be too high, but within that range, between 10 cents a hundred and 50 cents a hundred, any rate would be reasonable. It is a question of policy, and as to who determines the reasonableness of the rate. In the case which you state, we will say, that the Texas commission placed the rate at 20 cents a hundred, which is a reasonable rate. The Interstate Commerce Commission might place it at 40 cents a hundred, which also would be a reasonable rate, neither confiscatory, and neither so high as to prevent the business from moving, or to be extortionate. But reasonableness within those limits depends upon the rate-making power. Now, if the Texas commission made a rate of 20 cents—a reasonable rate—and the Interstate Commerce Commission made a rate of 40 cents, the Texas rate would be illegal, in my view of the situation. It would work a discrimination against the outside man, because of the paramount authority of the Federal Government to fix the rates and prevent discrimination.

I am sorry to have taken so much time in answering your question.

Senator CUMMINS. I was not giving so much attention to the latitude between confiscatory rates and a highly compensatory rate, but I was assuming that the State rate was one which paid the cost of the service and returned a reasonable reward on the value of the property, which rendered the service, and that being the kind of reasonable rate I had in my mind, when I propounded the question, you are of the opinion that such a rate, established by State authority, and not challenged, as a reasonable rate, in and of itself, may, nevertheless, be increased by the Federal Government, in order to allow a costlier service from the outside, into the State?

Mr. LOVETT. Yes, sir; or reduced, simply because no rate can be tested by, in, and of itself. Every rate has relation to some other rate, and it may be that this reasonable rate, in and of itself, in its relation to an interstate rate, may work a discrimination or may violate the Interstate Commerce Commission's conception of what the railroad company ought to earn from its entire traffic.

Senator CUMMINS. But your view of it is that the rate must be adjusted in the State so that traffic outside of the State can come in under competition. I ask this purely for information. The reasonableness of the rate, as such, in the Texas case, was not investigated at all, was it?

Mr. LOVETT. My recollection is that it was not.

The CHAIRMAN. Judge Lovett—

Senator CUMMINS. I beg your pardon, Mr. Chairman, I did not intend to take up so much time.

The CHAIRMAN. That is all right, Senator.

Judge Lovett, if you take away the power of the State commissions over purely State rates, what usefulness would you leave them? In the public interests, what powers are there that they could exercise beneficially?

Mr. LOVETT. That depends, Senator, on the local conditions. I am not sure whether there is or not a State commission is a matter of great concern or ought to be of great concern. There is a question whether or not they are necessary in the public's interest. If they are not, let them dissolve.

I called attention yesterday—and I believe you were present—to the duties of the California commission as enumerated by the chairman of that commission. Apparently they have some other things to do, and I think most State commissions, with the possible exception of the Texas commission, have. I believe its activities so far have been confined to railroads, but most of the State commissions have duties to perform with respect to all public utilities. They could be occupied in that way. With respect to the railroads I think they would probably be on the lookout for the welfare of their own State's interests in these rate adjustments and could represent their own States.

The CHAIRMAN. You think there would be a field of activity for them in presenting their cases before the Interstate Commerce Commission or before these regional commissions?

Mr. LOVETT. Yes, sir; I believe that could be handled as well by the commercial bodies of the different States, but perhaps the States would rather have their own commissions act in that matter.

Mr. SIMS. Is it not a matter for the States to determine for themselves?

Mr. LOVETT. Yes; I think so.

The CHAIRMAN. With reference to California, my observation is—and I may be mistaken—that since the creation of the new commission there its activities have led to a better understanding between the community and the railroads.

Mr. LOVETT. I have no doubt of that, Senator. I think the California commission—I will not say it is the best—but I believe it is one of the ablest State commissions in the country. As far as I have been able to observe, it is wide awake, progressive, and it has not been hostile. It has been strict, and it has been exacting, but I believe it has very greatly improved the relations between the railroads and the public, because the public understands that there is a commission there looking out for their interests. How long that kind of a commission will last I do not know. I hope it will last always, but it is not so much what the commission actually does, but what it may do. In the case of some commissions it is what they do.

The CHAIRMAN. With reference to grades and grade crossings, etc., would you expect that the police powers of the State would be operative or that those matters should come under the direction and control of the National Government?

Mr. LOVETT. Well, I think the railroad executives all contemplate that should be left to the State commissions, but the time may come when the National Government would have to take hold of that question. In that connection I should like to state that I was impressed by a notice posted in the station at Locust Valley, Long Island, where I live, by the Pennsylvania Railroad, appealing to the public to be patient in the matter of grade crossings and stating the number of grade crossings on the Pennsylvania system at that time and the average cost of separating a grade crossing. It was stated that if the Pennsylvania Railroad crossings were required to be eliminated—all grade crossings on its systems—it would cost it six hundred and fifty-odd millions of dollars, and in view of this large expenditure this was an appeal made to the public to be patient; that they were eliminating grade crossings and expected that to be their policy in the future; that it was impossible to eliminate all grade

crossings at once, and people must remember that there were other grade crossings than the one they were interested in.

This question of grade crossings is a very expensive proposition. I think, generally, the State commissions have been reasonable about it, and I should hope that they should continue to be so, but it might be necessary in time to come to give the Interstate Commerce Commission some supervisory power with respect to that, although I do not think that is necessary now.

The CHAIRMAN. With reference to clearances, there has been a great deal of agitation of that subject by the railroad brotherhoods of late. Changes in that respect, in order to secure greater safety of trains and for the operatives on the trains, are likely to cost a very large capital expenditure, are they not?

Mr. LOVETT. Yes.

The CHAIRMAN. Would you expect those matters to be under the jurisdiction of the State commissions as a matter of police regulation or under the jurisdiction of the national commission?

Mr. LOVETT. I rather think they ought to be under the Interstate Commerce Commission, because they are tied up very closely with the question of the employer's liability act and the safety of operatives on the trains.

The CHAIRMAN. You consider those questions—the question of clearances and the question of grade crossings—your view is that ultimately that power and that control will have to rest in the national commission. Now, what is there left for the State commissions?

Mr. LOVETT. I think grade crossings should be left much longer with the State commissions, because the safety only of the local people of the community, the citizens of the community, is involved in grade crossings, whereas in the matter of clearances the safety of the train operatives on interstate railroads is involved.

The CHAIRMAN. What other subjects would come under the police powers of the States?

Mr. LOVETT. I suppose the matter of stations and station accommodations.

The CHAIRMAN. You mean the size and the character of the stations?

Mr. LOVETT. Yes.

The CHAIRMAN. Construction?

Mr. LOVETT. Yes.

The CHAIRMAN. Location?

Mr. LOVETT. Yes.

The CHAIRMAN. Is not that a pretty big power?

Mr. LOVETT. It is.

The CHAIRMAN. You would leave that in the hands of the States?

Mr. LOVETT. Yes; I would try it. It is in the hands of the States now, and sometimes they are pretty exacting; but we have managed to live under it; and, of course, if the time should ever come when there would be a competition between the different States in building at the expense of the national service ornate stations beyond reason, and so as to impair the revenues of the roads, it might become necessary. I believe, however, that is very remote, and probably there would be relief in the courts against orders of that sort. But I think that should be left to the States.

The CHAIRMAN. What other things can you suggest?

Mr. LOVETT. Well, shipping facilities, perhaps, in the way of sidings and things of that sort. I am not prepared to call out offhand what the Supreme Court of the United States has never been able to define; that is, the police power of the States. It is rather a big undertaking. I might observe, however, that even if there should be nothing left for the State commission to do, that would not be a good reason for Congress to refrain from exercising its power of regulation.

The CHAIRMAN. I admit that.

Mr. ADAMSON. I think I can give you a definition of the police power of the States—whatever authority Congress leaves for them to exercise.

The CHAIRMAN. You have spoken with reference to these State commissions. I want to ask you a few questions regarding the regional commissions that you have spoken of. How many regions would you think it advisable to have?

Mr. LOVETT. I should start with not less than five. I might find out that 20 or 25 were necessary.

The CHAIRMAN. Would those regions be adjusted practically to the traffic areas that now exist?

Mr. LOVETT. Yes. I would ignore geographical lines.

The CHAIRMAN. You would ignore geographical lines, and would you ignore State lines?

Mr. LOVETT. Absolutely; and adjust the territories with reference to transportation territories and transportation systems.

The CHAIRMAN. And at first you would follow practically the traffic areas that now exist?

Mr. LOVETT. Yes. I am not so sure but that it would be a good idea to convert the various State commissions into regional commissions, in such a way as to let them exercise Federal power rather than State power.

The CHAIRMAN. Then that would make a region of each State, would it not?

Mr. LOVETT. No; I would not extend its territory. Well, confine it to the State, if that would be a way of solving it. I do not care so much, Senator, how many regional commissions there are or what the territorial limits of their jurisdiction are, provided they are all a part of one unified, systematic system of regulation, exercising authority under the same law and exercising the same power; that is, from the same source. It is the unification of the system of regulation.

The CHAIRMAN. Is there any method that you could suggest of merging the State commissions into regional commissions?

Mr. LOVETT. I do not know of any way except by appointment from the President and confirmation by the Senate, as members of the regional commission.

Mr. SIMS. And Congress could hardly provide for a process of that sort.

Mr. LOVETT. It could not. The selection would be with the President and the Senate.

Mr. ADAMSON. Why not just combine three or four States and State commissions and make a central federation?

Mr. LOVETT. Is that addressed to me, Judge Adamson?

Mr. ADAMSON. To the Chairman.

The CHAIRMAN. I will postpone my answer until the report comes in.

Mr. LOVETT. As to the agencies for carrying this out, Senator. I consider that a detail. Of course, it would have to be provided for, but they would have to be Federal agents, under my conception of it.

The CHAIRMAN. You will observe that section 19 of the bill to which I have referred provides for the acquisition of State railways. It reads:

Such corporation may, with the consent of any State, upon the approval of the Interstate Commerce Commission, acquire the railroad of any corporation now organized under the laws of such State—

And so forth. And later on—

With the consent of the State under which any railroad corporation is or may be organized, merger between such corporation and a corporation organized under this act may be accomplished under this act—

And so forth. Your proposal is that this national incorporation shall be accomplished without the consent of the State. You realize, do you not, the great difficulty that we will have, even those who believe in national incorporation, in passing such a bill?

Mr. LOVETT. Of course, my conception of it is that the States have already given their consent; that they gave that when they formed the Constitution, and that whether or not Congress will exercise the power conferred upon it by the Constitution Congress must determine. But I think it would be a mistake for Congress to attempt to devise a plan dependent upon the consent of the States. I do not think it would solve the problem.

Mr. ADAMSON. I think the judge misapprehended the question, Mr. Chairman. I understood you to refer to the difficulty of passing the measure through Congress?

The CHAIRMAN. Yes.

Mr. ADAMSON. As long as the Members are elected by the people I think that is a very wise suggestion that you made to the judge.

Mr. LOVETT. I beg your pardon; I did not understand that. I rather think the committee is better able to judge of that than I am. All I can do is to give my views as to what I believe is necessary to effectually regulate these railroads and to devise a system that will be workable. There may be some other method than that which I have been advocating and discussing. Whether it can be enacted or not I do not know.

The CHAIRMAN. When I framed this bill I recognized that difficulty and felt that it was better to resort to persuasion rather than force in order to accomplish national incorporation, and my assumption was that inasmuch as the States had thus far assented to the incorporation of State railways in great national systems, through holding companies organized in other States, they would see the same instances given their consent to such merger with corporations act and would gradually give their consent, though in the first instance there might be great opposition. I also observed that in some of the Southern States, where they are peculiarly tenacious of State rights and functions, they had by legislation given consent to the merger of railroads incorporated under their laws in a larger cor-

poration organized under the laws of another State, and they had in some instances given their consent to such merger with corporations organized under the laws of the United States. That was true certainly in one instance, and I think in several, from my examination of the matter at that time, with reference to the Southern Railway system. The question therefore occurs to me as to whether, assuming that national incorporation is desirable and should be accomplished as quickly as possible, it is wise to attempt to force it, which possibly would arouse opposition in Congress to the passage of the act, or whether it would not be wiser simply to frame a permissive act, in the wisdom of which the States would gradually acquiesce. What is your view about that?

Mr. LOVETT. I do not believe any State will voluntarily give up any power it has, any more than any tribunal, whether it is a court or a commission or any other tribunal, will give up power. I have never heard yet of any tribunal or any public body voluntarily surrendering any power. Now, I do not believe a bill such as you suggest here, making such a system dependent upon the consent of the States, would get anywhere. I think the State commissions, most of them, would oppose it.

The CHAIRMAN. And you think they would be influential with their respective States?

Mr. LOVETT. I rather think they would.

The CHAIRMAN. If they are influential with their respective States in such a way as to defeat the operation of a permissive act, is not that opposition likely to be equally effective in preventing the original passage of a compelling act by Congress?

Mr. LOVETT. That may be, Senator. I say, I can not tell whether that proposition would appeal to Congress or not. I am compelled to assume, and do assume, that Congress is here to legislate for the Nation and not for the States, or any particular State, and that in dealing with a national subject whatever the national interests require will be done.

I should like to say one thing in answer to your suggestion, if I may, about the attitude of the Southern States with reference to this matter. I believe I know something about the sentiment of the Southern States, and I do not believe they are any more contentious for State rights than any other States in the Union.

The CHAIRMAN. I supposed they were, and that that fact arose from the peculiar status bearing on the race question.

Mr. ADAMSON. No, sir; it arises over any commercial consideration or any other, and whenever the shoe pinches every State in the Union will kick. Sometimes it takes financial interest at home to make them do it.

The CHAIRMAN. Now, Judge Lovett, you will observe that section 20 of the bill referred to provides for an accident and insurance fund. It reads:

It shall be a condition of the grant and continuance of any franchise to do business under this act that the corporation holding such franchise shall set aside annually 1 per cent of the gross receipts of said corporation, to be held as a fund in the Treasury of the United States for the payment of pensions to the employees of such corporation who shall have been disqualified for active service, either by injury in the service or by age. The amount and time of payment, the investment of the fund, the disbursing of the same, and the entire management thereof shall be under rules and regulations to be made and from time to time altered by the Interstate Commerce Commission.

One per cent of the gross revenue of the railroads at present would amount to between three millions and three millions and a half annually. In case we legislate upon this subject and frame an incorporation act, what would you say about the wisdom of incorporating such a provision in it, and what would be your view as to its provisions?

Mr. LOVETT. I have no objection, I should say, to some scheme of benefits for disabled, injured, and ill employees to be incorporated in the act. I think it could be dealt with better as a separate proposition. I think progress is being made in those matters now. A number of companies are making much more liberal provisions than are contemplated here. I believe the development is going to be rapid.

The CHAIRMAN. And they are doing that voluntarily?

Mr. LOVETT. Yes. I do not like to speak so much of our own company, but we put into effect on the 1st of January a system of life, accident, and health insurance that costs a good deal of money. Other companies are doing the same.

The CHAIRMAN. Do you think it will cost 1 per cent of the gross receipts?

Mr. HAMILTON. In that connection will you mention the other companies? Can you do so easily?

Mr. LOVETT. I can not give a complete list from memory, but I can have a list prepared.

Mr. HAMILTON. If you will, just incorporate that in your remarks when you revise them.

Mr. LOVETT. Yes. I know that a number of companies are considering measures of that sort.

Mr. ADAMSON. Mr. Chairman, may I make a suggestion to the witness in your time?

The CHAIRMAN. Certainly.

Mr. ADAMSON. I have understood heretofore that the court has held that insurance, pure and simple, was not a matter of interstate commerce. Now, if carriers begin to carry on insurance in connection with their business as carriers, will not that change the situation of that insurance and make it a part of interstate commerce?

Mr. LOVETT. I am not able to answer that, Judge Adamson. I mention our system as a concrete case. We adopted, on the 1st of January, a system by which we procured life insurance for each employee receiving a salary of not over \$4,000 equal to one year's wages, with a minimum of \$500 and a maximum of \$2,500; also accident insurance to the amount of not exceeding \$2,500, and with disability benefits running as far as two years, and insurance against illness.

Mr. ADAMSON. Health policies?

Mr. LOVETT (continuing). To the extent of half pay, with a minimum of \$5 a week, and a maximum, I think, of \$2,500. We do not carry the insurance ourselves. We got a life insurance company to provide the life insurance, and an accident insurance company to provide the health and accident insurance.

Mr. ADAMSON. And you pay the premium?

Mr. LOVETT. We pay all the premiums. We are going to experiment with it. All settlements are made through us, and if we find after a year or more that we can do it cheaper ourselves, we will do it ourselves. We know, of course, just what it will cost, because

we know what the premiums amount to, and we will know from the payments to employees made through us how much it is costing the insurance companies; so we have a close check.

Mr. ADAMSON. Various propositions have been made to us in the last 20 years to legislate about insurance. We have refrained on the idea that it was not interstate commerce, and it was suggested to me that if the carriers themselves were going to take up the matter of insuring employees, it might alter the situation, but if you merely patronize the old companies and pay the premiums I do not know that that would change the situation.

Mr. LOVETT. I should say, as an offhand opinion, that it is not insurance; it is a matter of employment.

Mr. ADAMSON. A part of your contract?

Mr. LOVETT. A part of our contract. This benefit accrues to every man who has been one year, or who shall have been one year in the service, and in addition to this we have the pension system; that is also supplied by the company.

Mr. ADAMSON. All that is figured as compensation?

Mr. LOVETT. All that we figure as part of our expenses, and we are charging these payments as part of our operating expenses.

Mr. HAMILTON. If that is considered as part of the contract of hiring, under the decision of the Supreme Court of yesterday on the Adamson law, it might possibly become a matter relating to interstate commerce.

Mr. LOVETT. Well, we reserved the right to abolish this system any time we wanted to, and the benefit is forfeited when a man leaves the service. We can not and would not undertake to abolish it as to any particular individual; we would abolish it as a whole. We have also, as most roads have, a hospital system that is supported by the employees to the extent of monthly contributions, and we supply any deficit that arises. With the large companies employing a great many men, the hospital systems are usually self-supporting. Small companies sometimes have a deficit. Sometimes there is a deficit with us, but when business is heavy there is no deficit.

Mr. ADAMSON. Then, if in a general strike all the men quit, all these benefits would cease?

Mr. LOVETT. Yes. There are a good many motives entering into it. We want to make the service attractive to the men.

Mr. ADAMSON. Mr. Chairman, I am much obliged to you.

Mr. SIMS. All of which is paid for by the public who patronize the road?

Mr. LOVETT. Yes. We want to make the service attractive to the men, and we also want the men to feel that some provision is made for them. We think the families of the men are about the most important part of the men, and we want them to feel that some provision is made not only for death, but for illness and accidents.

Mr. SIMS. But without a sufficient freight rate you could not keep this up? I mean revenues?

Mr. LOVETT. Oh, it is going to run to a large sum of money each year, but compared with our total disbursements it is not large.

Mr. HAMILTON. Of course that would all run back to the old proposition that the consumer pays the tax?

Mr. LOVETT. Yes, sir. We can not get away from that, Mr. Hamilton. Whatever is done the shipper has got to pay for.

The CHAIRMAN. The purpose of this provision was mainly to provide for the employees who were subject to the great risks, and to frankly impose the cost of it as an operating charge upon the public?

Mr. LOVETT. I believe the situation of the railroad operatives in every way has been very rapidly improving, and I think railroad companies have been doing a great deal in recent years to improve the situation of their men. I know we have, in club houses and otherwise, and we think it is money not only for the company but that it has done a very great deal of good which can not be measured in dollars and cents.

The CHAIRMAN. In the case of your company, does the estimate you have made of the cost of this equal 1 per cent of your gross receipts?

Mr. LOVETT. What is 1 per cent of \$104,000,000? That was our gross receipt for last fiscal year.

The CHAIRMAN. One per cent would be approximately a million dollars.

Mr. LOVETT. Approximately a million dollars a year. Our gross earnings in the fiscal year ending June 30 were unusually large. The estimated cost of this insurance plan would be a little less than that, but it would be more than 1 per cent on our gross earnings for some years. I would rather not give the exact estimated cost of this at this time, because I do not know.

The CHAIRMAN. The next section, section 21, provides for a board of conciliation. It reads:

The Interstate Commerce Commission is hereby empowered and directed to act as a board of conciliation between corporations organized under this act and their employees as to any dispute arising between said corporation and its employees in the matter of compensation, hours and conditions of labor, the protection of life and limb of said employees; and such power shall be exercised by such commission in accordance with rules and regulations to be made and from time to time altered by said commission.

What is your view as to the wisdom of intrusting the power of settling disputes between railroads and their employees?

Mr. LOVETT. I do not care much for a board of conciliation; but I am very strongly in favor, as I stated yesterday, of some tribunal that will decide questions between railroads and their train employees and of a law that will make that decision effective. Whether that is done by the Interstate Commerce Commission or by some other commission I do not care, provided it is by a commission of high character appointed by the President.

The CHAIRMAN. What do you think about the wisdom of intrusting this power of settling these disputes—not simply by a board of conciliation, but of settling these disputes?

Mr. LOVETT. To the Interstate Commerce Commission?

The CHAIRMAN. Yes.

Mr. LOVETT. I should favor it. Of course the Interstate Commerce Commission under the existing law could not give much time to questions of that sort and perform its other duties.

The CHAIRMAN. It would have to be enlarged and divided into divisions?

Mr. LOVETT. It would have to be enlarged, or through some subsidiary commission—

Mr. ADAMSON. Mr. Chairman, the commission might do that just as it does some of its other duties—appoint some one else to do it.

The CHAIRMAN. Yes.

Mr. LOVETT. But I am distinctly in favor of giving some commission—the Interstate Commerce Commission, if it is given sufficient time—that power. I say the Interstate Commerce Commission because we know who the commissioners are, and regard them as fair men, and they would probably settle the dispute fairly. I would also favor some other high-class commission to decide such questions. I am distinctly in favor of it.

Senator CUMMINS. I did not quite understand your answer. Do you mean that you favor giving to a commission—the Interstate Commerce Commission or some other—the power to fix all compensation to be paid by the railway companies originally, or do you mean to give it power to adjust disputes when they arise?

Mr. LOVETT. To adjust disputes. Where the parties agree I do not see any occasion for taking the matter to the commission. It perhaps ought to have a veto power, as it has with reference to rates of transportation.

Senator CUMMINS. You are familiar with what is known here as the Underwood proposal or amendment—

Mr. LOVETT. Yes.

Senator CUMMINS (continuing). Which gives the Interstate Commerce Commission power—makes it its duty to fix all wages and salaries, as well as hours of labor and conditions of labor, from the highest officer of the corporation to the lowest employee. Do you mean that you favor some such proposition as that?

Mr. LOVETT. I should have no objection to that, Senator; but I believe that is putting more work on the commission than is necessary. For the same reason I believe that it would be a mistake to make it the duty of the commission to fix all rates.

Senator CUMMINS. Yes. The idea in your mind was to confine the authority to the adjustment or settlement of disputes when they arise, with regard to compensation?

Mr. LOVETT. Yes.

Mr. HAMILTON. Do you understand that to be the gist of the decision of the Supreme Court of yesterday?

Mr. LOVETT. I do not understand that decision, Mr. Hamilton. I have not read it. I have only seen the newspaper reports, which are not very clear. But my view as to the right of Congress to do this is wholly independent of that decision.

Mr. HAMILTON. Exactly.

Mr. ADAMSON. In other words, you knew it before the Supreme Court said it?

Mr. LOVETT. No; of course I did not know what the Supreme Court would decide, but I understood the controversy in that case was as to the power of Congress to fix wages, not to require arbitration.

Mr. ADAMSON. Oh, I thought he was talking about arbitration. I beg your pardon.

Mr. LOVETT. Yes. Now, what I meant by my statement that I favored some tribunal to decide controversies—

Mr. ADAMSON. I thought that was what he was talking about. I beg Mr. Hamilton's pardon.

Mr. HAMILTON. The distinction was drawn between the fixing of wages originally and the fixing of wages in case of disagreement, and

I asked Judge Lovett—I meant to ask him—whether he understood the recent decision of the Supreme Court to give the power to Congress to fix wages in case of disputes.

Senator CUMMINGS. Do you recognize any difference between the power that Congress has to fix wages and the power it has to delegate to a commission the same authority?

Mr. LOVETT. I do not, since Monday, when the Supreme Court decided that; because apparently Congress has the power to fix wages and to delegate it to the commission.

Senator CUMMINGS. I understand the Supreme Court has decided that. I do not think there ever ought to have been any question about it.

Mr. LOVETT. The distinction, in my mind, Senator, without taking the time of the committee to make any argument on the subject, was this: Undoubtedly Congress has power to fix or to authorize a commission to fix rates, because the rates of common carriers have from time immemorial been subject to be fixed by law. The right to fix wages never has been regarded, as I understand, as a proper legislative power. That difference is responsible for the controversy that was decided by the Supreme Court.

Senator CUMMINGS. Yes.

Mr. LOVETT. And the Supreme Court has, in effect, held that Congress has the same power to fix wages as to fix rates.

Mr. HAMILTON. The power to fix rates was established by common law even before it became incorporated in our Constitution.

Mr. LOVETT. Yes.

Now, applying this to the question asked by Senator Cummings, I have felt all along that whatever might be the power of Congress to fix wages, Congress would have power to establish a tribunal to settle a wage controversy, just as a court settles a controversy between two individuals with respect to a piece of land—

Senator CUMMINGS. I have no doubt about that.

Mr. LOVETT (continuing). And say that this land belongs to A and not to B; that Congress would have the right to create a tribunal to settle a dispute—not necessarily a court, but it would be due process of law to create a tribunal appropriate to that particular matter, to decide disputes between interstate carriers and their employees over wages, and to make that binding as a decree of court is binding, except, of course, it could not compel a man to work who did not want to work.

Senator CUMMINGS. The point I had in mind was this: When we give a commission authority to do a thing, we must give it a rule which it may apply to the facts, and all the rule that we could give it would in this instance be that it must fix wages which are reasonable. Now, is that a sufficiently definite rule to enable Congress to work through a commission?

Mr. LOVETT. You are dealing now with a commission fixing wages in the absence of a dispute?

Senator CUMMINGS. Entirely.

Mr. LOVETT. I should not like to venture any opinion on that subject, Senator, until I have seen the opinion of the Supreme Court, because it is a new doctrine to me.

The CHAIRMAN. As I understand, the decision of the Supreme Court is based upon the public character of the employment?

Mr. LOVETT. I have not seen it; I do not know.

Mr. ADAMSON. Mr. Chairman, when the judge was expressing the idea that he had never until lately understood that Congress had jurisdiction over wages, I interrupted him and he had not finished his sentence. I want to call attention to the fact that in section 20 of the act to regulate commerce there is a long enumeration of things which the commission shall study to keep itself informed upon, and among those is the specific mention of wages, the number of people employed, who they are, and what they are paid. I presume that that enumeration is to aid the commission in discharging its duty in adjusting rates. Now, is not that, itself of long standing, a recognition that Congress did have some jurisdiction over wages?

Mr. LOVETT. Well, Judge Adamson, that was rather a live question among the group of railroad men of which I was a member here last summer.

We recognize that the commission, upon an application, for instance, to increase rates, would have a right to say whether or not the increase should be granted and to inquire into everything we spend and as to whether we spend too much; and when we were urged to voluntarily agree to the miscalled eight-hour proposition we were afraid that if we agreed we would be charged with extravagance on an application for an increase in the rates. The fact is that a great many of us were swamped with telegrams giving us fair warning that if we acceded to this demand we need not expect a rate increase to reimburse us, because they contended it was an unreasonable demand. Under the provision you mention, of course, the commission keeps itself informed as to wages and everything the railroads do in connection with these applications for rate increases, but I do not understand it was intended thereby to allow the commission to fix wages.

Mr. ADAMSON. I understand the commission, while it will consider wages, they will not make an allowance, in fixing rates, for wages which they find were improperly allowed. That might have been a miscalled eight-hour proposition when the President had the matter up with you gentlemen; but, to dispose of a whole lot of statements and confusion about it, I will say that, before our committee, where the law originated, it was an eight-hour law, and it was reported on the statements of the brotherhoods that 80 per cent of your divisions were 100 miles long, approximately, and if you let them run  $12\frac{1}{2}$  miles an hour they could run them in eight hours as well as 10 and there would be no increase in expenses for you except that you would have, probably, to run lighter trains.

Mr. HAMILTON. But the Supreme Court has heretofore said that what is said in the law governs and not what is said about the law.

Mr. ADAMSON. When you see the full text of the Supreme Court's decision, you will find that they do not combat the idea of our committee. The basic idea was an eight-hour law, and the brotherhoods will find, if the matter ever arises, that we did not intend, by collusion or otherwise, to let them work eight hours on one day and then work eight hours in the same day and get paid for it. The proposition was purely and simply an eight-hour day.

Mr. LOVETT. If you had passed a straight eight-hour law, I am afraid you would have had a strike.

Mr. ADAMSON. Well, they must mean what they say. They stated they wanted eight hours' work a day.

The CHAIRMAN. Let us go on.

Mr. ADAMSON. Have we not been going on?

The CHAIRMAN. Section 22 refers to penalties, etc.

Mr. ADAMSON. Can not we facilitate going on by adopting the full bill in gross?

The CHAIRMAN. I think so, but I think it would require a great deal of persuasion, and I should want to amend it myself.

Mr. ADAMSON. I do not think you would want to vote for it.

The CHAIRMAN. Section 23 provides for dividends. I will read it:

No such corporation shall pay or distribute to its stockholders in any form during any one year a dividend or dividends exceeding in total amount 5 per cent upon the entire capital stock. If, after the payment by such corporation of its operating expenses, maintenance, improvements, and betterments, its taxes, its interest on bonded or other indebtedness, and its contribution to the accident and insurance fund, there shall be a surplus over and above the amount necessary to pay such dividend of 5 per cent per annum, the surplus shall be apportioned as follows: One-half thereof shall be paid into a guaranty fund in the Treasury of the United States for future dividends in case of a slackening of business, such fund to be controlled and invested by the Interstate Commerce Commission, and one-half thereof shall be paid into the accident and insurance fund provided for by this act.

No reduction of rates as to any given railroad shall be made or ordered by the Interstate Commerce Commission, or by any other governmental agency, which shall make it reasonably probable that such 5 per cent dividends can not be earned upon the total capital stock of the corporation.

I will say, with reference to that, I have modified my views. I would increase that to 7 per cent.

Of course, the interest rates have increased since the time this bill was drawn, and my view would be to increase that from 5 per cent to 6 or 7 per cent.

What is your view regarding the effect of limiting dividends, with reference to the public interest? Does it, in your judgment, have the effect of, or will it have the effect of, encouraging the betterment of the road if the profits exceed the rate of dividend, and increase wages, effect a diminution in hours, and general providence for the employees of the railroads?

Mr. LOVETT. Senator, that is a very large subject, and I believe I could point out many objections to it, but I will not undertake to cover the whole field. I think it would be a very great mistake to attempt anything of the sort, because I am absolutely certain that it can not be successful. I think I stated yesterday that from all of my connection with railroads and with rate making, I have never yet known a particular rate to be made with reference to dividend requirements of the companies. I do not refer to the general level of rates. I will not undertake to enumerate all of the objections, but you see at once that some railroads with a given system of rates would earn a great deal and others would become bankrupt. The conditions on the roads vary so that it is impossible to fix rates with reference to dividends of a company. You have to fix the rates with reference to the traffic and the needs of the public and not with reference alone to the needs of the railroad company.

Rates, I believe, are commercial matters. I believe the development of the country in the past and, I feel confident, the development of the future, will require that rates continue to be what they have always been, a commercial proposition. The rates have got to be made with reference to the needs of commerce.

We are not starting out with a new system where the rates will be made all over again, but the rates are already made. They have grown with the railroad business. The relations have been adjusted with reference to the development of the railroads and the commerce. You can not disturb that by launching upon an entirely new system. It is entirely a matter of expert adjustment. The matter of rates is largely dictated by the commercial necessities and by the needs of the traffic and the needs of the different communities, by competition of ports and manufacturers and markets. There is an endless multitude of circumstances that enter into the making of rates, and the probabilities are that nobody could give half the reasons that actually entered into the making of any given rate to-day—certainly not any made several years ago. Any attempt to base rates on the value of the railroads or only on the needs of the railroads for revenue would be disastrous. So, one witness here, I believe, suggested a system of rates that would pay 6 per cent on the value of the roads or the investment in the roads, and that the rates be put up or down as the necessity for keeping up the 6 per cent developed. Of course, I can not imagine anything that would be more distressing to the business of the country than such system of rates.

Your question suggesting that a fund be created to continue dividends in lean years—that would mean, I suppose, all the railroads of the United States would be pooled, because you would have to take care of the weak roads as well as the strong. I suppose it contemplates that all the railroads of the United States be put into one ownership.

The CHAIRMAN. I did not have that in contemplation at all.

Mr. LOVETT. I do not see how you can work it unless—

Mr. ADAMSON. Some railroads are lean all the time.

Mr. LOVETT. Yes; some railroads are lean all the time. I believe more people are served by the lean roads than by the fat. You can not ignore the lean roads in this matter. I should say that rates must be left to the commercial interests of the country, to the railroads, and to supervision by the proper Government agencies. It is simply one of those things that can not be settled. The Government and society are in a constant state of ferment and progress, and so it is with rates. It would be very convenient to have a rule by which to measure rates—to have a commission sit down and say this is reasonable and this is not, etc., but it can not be done. We have tribunals for deciding—not always justly—but deciding these matters. There is absolutely no rule—and I say it with all the confidence any man can feel after a great deal of experience with rate controversies—that there is absolutely no rule for deciding rates. We know what a confiscatory rate is, and we know what a rate is that will not permit the traffic to move. It is necessary to leave the matter to be worked out under commissions as they have been working it.

I think the plan you have suggested is utterly impracticable, unless you are preparing to pool all of the railroads all over the United States and let the strong railroads carry the weak railroads, and that I do not believe anybody favors.

The CHAIRMAN. I understood you to say that in making the rates the needs of the roads are not considered, and yet was not that the basis for the application for an increase of 5 per cent?

Mr. LOVETT. Yes; but the rates had already been made—the adjustments had already been made—and they put a certain increase on certain commodities. I referred particularly to original rates and not to a general advance or decrease to a new level as for an emergency.

The CHAIRMAN. In doing that they considered the needs of the roads. So, as a matter of fact, they do consider the needs of the roads?

Mr. LOVETT. Yes; when an appeal is made to the rate-making power for an increase in rates they do base it upon the needs of the roads.

The CHAIRMAN. Now, the thought I had in this section is this: That by a limitation of the dividends fixed at a rate that would attract capital into the roads, that you would thereby automatically have one of three things—if there was any surplus above those dividends—namely, the betterment of the roads, reduction in rates, or improvement in the wages and conditions of the men, or in perhaps all of them. All of those are beneficial purposes. Then I had in view the history of the New York & New Haven road, whose charter limited their dividends to 10 per cent—a charter granted a long time ago. So long as they operated under that charter and avoided the scheme of expansion subsequently developed the limitation of dividends resulted in an enormous betterment of the road, so much so that the New York & New Haven road, I believe, was regarded as the best railroad in the country. It resulted in the improvement of the terminal facilities, the multiplication of tracks and sidetracks, and it was the most perfect machine in the country for transportation.

Now, they broke loose from that charter restriction. I do not know how or whether it was sanctioned by law or not, but they landed in difficulty later on. You will observe that this provision does not compel rates which will yield 6 per cent dividends—yield these dividends. It simply provides that no reduction in rates shall be made which shall make it reasonably probable that the dividends can not be maintained, leaving it harder for the road itself, I imagine, to meet such conditions as might necessitate a reduction of rates in order to maintain any business or get any business. I agree with you that you can not by a mere legislative enactment give a road business. It has got to meet the market in some way; but the purpose of this was to prevent the regulative power being used in such a way as to diminish its dividends and to limit the dividends in some way as to make the surplus available either for dividends in the lean years or for improvement of the roads or the reduction in rates or the betterment of the wages and conditions of the men.

Now, don't you think that such a provision as that would, over a series of years, work out automatically a reduction in rates, betterment of the roads, increases in wages, and improvement in conditions of the workingmen?

Mr. LOVETT. On the very rich roads—the strong roads—it would make them better roads and improve or, perhaps, increase wages and, perhaps, reduce rates. It would make it still harder for the weak roads to live and to meet their competition. I should say, if you are to limit dividends, you had better pool the interests of all the railroads. If the rich roads can get only so much, you had better help the weak roads; otherwise, if you are going to treat each road separately, you will make the good roads better and the poor roads poorer.

The CHAIRMAN. You think it would necessarily have that effect on the weaker roads?

Mr. LOVETT. I should think it would.

The CHAIRMAN. Provided they have the same traffic area; yes.

Mr. LOVETT. The more money spent extravagantly on a railroad in improving it, the more attractive it will be to the public, and that much more business it will take away from the poorer competitor.

Mr. HAMILTON. Would that naturally lead, in the course of time, to the absorption of the poor competitor?

Mr. LOVETT. If it is a competitor, then, under the existing law, of course, it could not be absorbed; but I do not know what would become of it.

Mr. HAMILTON. There seems to be means for what you call indirect absorption—selling out, perhaps, to those who want to buy.

Mr. LOVETT. I have not discovered any in recent years, Mr. Hamilton. I think one of the benefits of the Sherman law is to diminish the nuisance value of a good many roads.

Senator TOWNSEND. Do I understand, Mr. Chairman, that Senators and Representatives can enter into your questions here? There are a lot of things that I should like to ask at this time, but I hesitated to interrupt you.

Mr. ADAMSON. The rule adopted was that the witness should make his statement, his opening statement, without interruption, but that on cross-examination we can mix it with you.

Mr. HAMILTON. I do not understand it as Judge Adamson states, although I believe it would be an excellent innovation.

Mr. ADAMSON. The prohibition was only with reference to the direct statement.

Mr. HAMILTON. By way of apology, I wish to state that I had an illustrious example.

Mr. ADAMSON. And your illustrious example was proceeding by authority.

The CHAIRMAN. I will only say that I understood the rule to be that it applied both to the direct statement and to cross-examination.

Mr. ADAMSON. This rule, I think, would apply to the cross-examination—that we should ask the chairman's permission to interrupt him. That I have done in each instance.

Mr. SIMS. The rule was that each conduct his own examination, and should be permitted to finish before interruption.

Mr. ADAMSON. That is not the rule at all; but politeness would require that we ask the chairman for permission to interrupt the examination.

The CHAIRMAN. We will settle that in executive session. As I have yielded to others, Senator, I should be glad to yield to you.

Senator TOWNSEND. I do not want to violate the rule, but if we all take as much time as you have we would never have time to talk about anything. I simply have a few questions which I should like to put at this time to develop certain features of this matter. Of course we are never going to get through with the examination if we each take as long as the chairman has and proceed in this way.

Senator CUMMINS. Our rule is in writing.

Mr. HAMILTON. We have not all got bills.

The CHAIRMAN. I will proceed. I will close in a few minutes.

Mr. ADAMSON. The rule we adopted was for the convenience of the witness as well as for the acceleration of business. The rule was that he should make his direct statement without interruption, and when the examination begins it was only necessary to ask permission to interrupt, as both Senator Cummins and I have done.

Mr. HAMILTON. I did not have that interpretation of the rule.

Mr. SIMS. Judge Lovett will stay with us until the next strike anyway.

Mr. LOVETT. I am in no hurry.

Mr. CHAIRMAN. I will close my examination in a few moments.

Judge Lovett, we have already spoken of the police powers of a State. I realize, of course, the embarrassment for a great system of railroads to be under the direction and control of 10 or 11 sovereignties, one the national sovereignty and the other the State sovereignties. In the exercise of these police powers by the various States do you find they exercise them with reference to crews and other conditions of service in such a way as to embarrass interstate operations?

Judge LOVETT. Speaking for the Union Pacific, Senator, I should say no, except that one State on our line has passed what is commonly known as the "full-crew law," which has subjected us to an absolutely useless expense. Beyond that we have no trouble with the police powers as exercised by the various States. We are quite as anxious as they are for reasonable measures of safety. They require some things of us sometimes that we do not agree with—building some depots which we think are not necessary—but generally they are not large items. I stated at the outset that very few States in our territory have laws regulating the issue of securities—only three—and with those States we have had absolutely no trouble. They have assented to what we sought to do. The only real grievance in our territory is on account of some 2-cent-fare laws. But so far as the police powers are concerned we have had no difficulty and have no complaint.

The CHAIRMAN. In your experience, when the State commissions act do they have hearings in the immediate communities that are affected, or do they hold hearings at some central place?

Mr. LOVETT. Generally at the capital.

The CHAIRMAN. Have you observed both systems?

Mr. LOVETT. Do you mean where they are held in the immediate locality?

The CHAIRMAN. Yes.

Mr. LOVETT. Yes.

The CHAIRMAN. How does it work?

Mr. LOVETT. I think it was satisfactory to everybody—to the public and to the roads.

The CHAIRMAN. Such hearings are likely to become common meetings?

Mr. LOVETT. Yes; they are.

The CHAIRMAN. Public sentiment is both expressed and becomes formed?

Mr. LOVETT. Yes; generally they are like town meetings, and they are generally held at the capital; sometimes in some other locality.

The CHAIRMAN. Do not those meetings serve the purpose of bringing about a better understanding between the railroads and the communities?

Mr. LOVETT. Yes. I think they are very good. I am not objecting at all. Any system of regulation that is devised ought to be brought close to the people. That is why I suggest these regional commissions—call them regional or call them anything you like.

The CHAIRMAN. But if we should have a region comprised of 10 or 12 States, it would be rather difficult, would it not, to get into immediate relations with the different communities, as the State commissions do?

Mr. LOVETT. No; I think not. I see no reason why these regional commissions should not go wherever there is any matter to hear. It would be very much better than now. People are brought from all over the country to Washington or other great centers to appear before the Interstate Commerce Commission.

The CHAIRMAN. It would be an improvement, of course, upon the present system?

Mr. LOVETT. Yes; a very great improvement.

The CHAIRMAN. But could you bring a regional commission into direct touch with the various communities, as the State commissions are brought?

Mr. LOVETT. Not to the same extent. They would not be candidates for office, for instance. Candidates travel over States sometimes for campaigns.

The CHAIRMAN. I mean in the discharge of their duties.

Mr. LOVETT. It depends on how many regional commissions there are.

The CHAIRMAN. That is what I wanted to know. I want your own view on that subject as to whether five is enough.

Mr. LOVETT. There ought not to be less than five, and if I were framing the law I should provide that there should be not less than 5 nor more than 20, and leave the Interstate Commerce Commission to define the territories they should be appointed in, and I should provide some method by which more could be created.

The CHAIRMAN. Could you suggest in the law itself any field of activity for the State commissions?

Mr. LOVETT. As State commissions?

The CHAIRMAN. As State commissions, I mean, in presenting the interests of their States before the commission.

Mr. LOVETT. In my conception of the relations of the States and the Federal Government I would not mix the State officers and Federal officers dealing with the same subject.

The CHAIRMAN. Yes; but if you had one acting as the counsel and the other as the judge, there would be no conflict, would there?

**Mr. LOVETT.** I think you must leave to the State commissions the functions they will exercise. That is a matter for the State law.

**The CHAIRMAN.** We could in a law facilitate that and perhaps provide for part of the expense.

**Mr. LOVETT.** I see no objection to that.

**The CHAIRMAN.** Another thing. The law, I believe, at present requires that the decisions shall be in writing, does it not?

**Mr. LOVETT.** I think so.

**The CHAIRMAN.** Do you think it would facilitate the determination of these questions; speed the business, if that requirement of the law were left out?

**Mr. LOVETT.** I am inclined to believe it would. I know it would.

**The CHAIRMAN.** Would it work as satisfactorily, do you think?

**Mr. LOVETT.** I think it would.

**The CHAIRMAN.** Both to the public and to the carriers?

**Mr. LOVETT.** Yes; I believe so. Unlike most lawyers—perhaps because I am not so active as a lawyer now—I am very much in favor of abolishing most of this opinion writing in the courts, as well as by commissions and officers.

**The CHAIRMAN.** Judge Lovett, would it be possible for you to give, in a tabulated statement of some kind, an idea of how national incorporation would work with reference to your company, so that it would be condensed and concise, with, perhaps, a diagram showing how the organization would be accomplished?

**Mr. LOVETT.** I am not sure that I could put it in tabulated form, Mr. Chairman, but I could put it in a few words.

**The CHAIRMAN.** If you could prepare carefully some such statement, I think it would be of service to the committee.

**Mr. LOVETT.** I endeavored to do that generally in respect to corporations in my statement on yesterday.

**The CHAIRMAN.** Judge Adamson, do you wish to examine the witness?

**Mr. ADAMSON.** In the outset of your statement, Judge, I understood you to indicate that on your system of roads you would have had very little difficulty.

**Mr. LOVETT.** Yes.

**Mr. ADAMSON.** You worked smoothly with the State governments and the State regulations?

**Mr. LOVETT.** Generally; yes.

**Mr. ADAMSON.** The only specific difficulty I remember you mentioned was where one State had passed a full-crew law possibly some other had adopted a 2-cent rate. The Federal regulation up to date—you register no specific objection to it, do you? It is the State regulation you desire to exempt yourselves from?

**Mr. LOVETT.** My objection to the Federal regulation up to date is principally, I should say, because of the delay due to the inability of the commission to promptly dispose of cases—

**Mr. ADAMSON.** I understand that.

**Mr. LOVETT.** And in the resultant suspension of proposed increases in rates.

**Mr. ADAMSON.** I understand that you think the business is clogged, and I agree with you; and twice our committee has passed a bill and

sent it to the Senate to relieve that necessity by increasing that commission, but the Senate has not seen proper to agree with us as to the necessity. But, aside from that piece of machinery, what I mean is the acts of Congress up to this date to regulate interstate commerce, you make no particular objection to them?

Mr. LOVETT. I object further to the combination in one body of these various inconsistent functions.

Mr. ADAMSON. That is, in the same piece of machinery. I understand your objection to that. You think the body that passes on the rates and practices ought not to perform the duties purely administrative and the duties of prosecuting for violations?

Mr. LOVETT. Yes.

Mr. ADAMSON. Aside from that, the acts of Congress that have been made from time to time you think are generally wise, do you not?

Mr. LOVETT. Yes.

Mr. ADAMSON. You mentioned only one, I believe, and that was the prohibition of rebates. Of course, that was the most crying evil at that time and hurt the railroads as much as it hurt anybody else.

Mr. LOVETT. Yes; as between the acts of Congress as they exist to-day and the unrestricted rule of the railroad men, I should a thousand times prefer the acts of Congress.

Mr. ADAMSON. You stated that the difficulties about which you were testifying were applicable to other roads and not to your own system?

Mr. LOVETT. Not to the Union Pacific so much, because, as I explained, the State that incorporated the Union Pacific and which confers its corporate powers has never had a railroad commission until this month. Utah created one this month, but has not given it any supervision over securities. Several of the States in our territory have no commissions, and those that have commissions have always been fair and cooperative. Therefore we have no complaint against the commissions in those States, except, as I said, some 2-cent rate laws and "full-crew" laws and some minor regulations. Some had required us to run trains we do not think we should run.

Mr. ADAMSON. I take it that the fact the States have not deemed it necessary to enact any further regulatory legislation is that the administration of your system is giving local satisfaction.

Mr. LOVETT. Well, that is claiming a good deal more than my modesty will permit.

Mr. ADAMSON. Is it not your observation that—

Mr. LOVETT. There are other railroads in our territory, and I should have to also claim it for them.

Mr. ADAMSON. That may be true of them. But you are talking about yours. Now, it is your observation, is it not, that this local legislation, which you find objectionable, usually results from some local complaint as to the conduct and administration of the road?

Mr. LOVETT. No, sir; that is not my observation. My observation of State regulation of railroads in many instances is not influenced by any mismanagement or misconduct of the roads in that territory, as far as I can observe it.

Mr. ADAMSON. Do they not think so, and is that not the reason they legislate?

Mr. LOVETT. I could not answer as to their ideas.

Mr. ADAMSON. You do not think they would just willfully proceed to legislate against you because you were easy marks when they were not dissatisfied and saw no reason for legislation?

Mr. LOVETT. I think most of the oppressive legislation against railroads is due to lack of information upon the part of the public, due also to misconduct of some railroads—some of it very ancient, however—and some conspicuous cases perhaps of unjust practices—

Mr. ADAMSON. I have no doubt you find it true that an injury, real or imagined, rankles for a long time in the public mind, and also that one injustice is oftentimes remembered and visited on innocent railroads. I have no doubt of those two facts.

Mr. LOVETT. I am quite sure that some very harmful State legislation existing to-day—I will not specify—is due entirely to a case of dishonesty and oppressive acts of a railroad officer about 30 years ago; and there has not been another case like it in that State in 30 years.

Mr. ADAMSON. Speaking of the ratio between the local and interstate business, you stated that the proportion of interstate business on your road was very large, some 88 per cent of the whole. That is due to the condition of your road, that it is a transcontinental road and so much of your business is long hauls, is it not?

Mr. LOVETT. I do not believe our percentage on interstate business is much larger than most other large systems, except in certain States. I mentioned Texas because of its immense area and that, as an outlet, it reaches the Gulf ports. I mentioned California as another example. But take the eastern roads. I apprehend, without knowing, that quite as large a percentage of the business of the Pennsylvania Railroad, the New York Central Railroad, the Baltimore & Ohio Railroad, and the Southern Railroad is interstate as on the Union Pacific.

Mr. ADAMSON. Well, they are somewhat similar to your road. The three you mention in the East go through the populous part of a route that serves the Union Pacific Road.

Mr. LOVETT. I am sorry to say they do not handle much Pacific business.

Mr. ADAMSON. Yet, from Chicago and St. Louis to the East they do have long hauls?

Mr. LOVETT. Oh, yes.

Mr. ADAMSON. You stated that in all probability undertakings for construction and extension would be confined to the activities of existing roads. It would not be likely that independent roads would be constructed in the future. Would not the Federal incorporation which you seek insure that condition?

Mr. LOVETT. I do not think it would have any effect on it.

Mr. ADAMSON. Of course you must be aware of the fact, as an observer of men and measures, that old railroads, firmly established, having prestige, can, whether they openly assert it or publicly declare it or not, deter the construction of other lines of railroads where it would interfere with their existing business; and if you are fortified by this act compelling all railroads which engage in interstate commerce to be incorporated by the Federal Government, and the further fact that a road could not live on a 12 or 15 per cent of business allowed by your estimate of local business, I do not see how it would

be possible to ever construct another road unless one of your old corporations gave its consent.

Mr. LOVETT. Dividing that question. Judge Adamson, and answering first as to the ability of old established roads to prevent the construction of new roads, that is not my experience. I know that independent roads are being built in what we regard as our territory, and we can not prevent it.

Mr. ADAMSON. Possibly you have been fair and have not tried to prevent it.

Mr. LOVETT. No. If I could do it, I would do it, because I believe the roads are unnecessary and that they are not going to do the community any good.

Mr. ADAMSON. Right there is where you encounter another difference of opinion, is it not?

Mr. LOVETT. Yes.

Mr. ADAMSON. Some of these States think that the railroads have done wrong and pass local statutes, and you think you have not done wrong and think those statutes are oppressive?

Mr. LOVETT. Yes.

Mr. ADAMSON. I may know of a large section of the country, which I do know of, which has the right to be built up. It is not a finished territory like some of yours. It is there under all the blessings of Providence and surrounded by three or four railroads which do not think a new railroad is necessary, and although we have organized three or four enterprises, when we have gone into the money markets to get money, somehow the people that had money were quietly advised by somebody that that road was not necessary and ought not to be built; and I know one that was built in spite of all that. It relieved the monopoly in six or eight different places where it was constructed, but it had litigation at every point; was opposed at every point by the old roads; its finances were crippled; and finally it went into the hands of a receiver before it was finished. It has triumphed through the desire of the people and is there running, although not very profitably. Now, if you succeed in passing a law compelling all corporations to take Federal charters, I wonder if it would be insisted that the commission could compel any of them to become parts of a joint through route, with a joint rate in interstate commerce.

Mr. LOVETT. To continue, if I may, Judge Adamson, my answer to your first question. I do not understand that Federal incorporation would discourage the building of local roads. My judgment is it would promote it. The provisions of the act of Congress for incorporation, I take it, would be simple, and it would be quite as easy for a man or group of men to prepare their articles of incorporation, send them to the Interstate Commerce Commission, and file them as it would be, for instance, if it were in your State, to get a charter in Georgia.

It would tend to promote them further in this respect. A man in Georgia may be familiar with the Georgia laws and know the processes for incorporation of companies and their rights and powers as Georgia corporations, but a nonresident may not—probably does not. So, under Federal law every man in the United States would be controlled by the same law in incorporating railroad companies, and outsiders could more readily go to your State and incorporate and build a railroad, and you would get capital in there in that way.

I can not conceive it possible that there would be less building of local lines under Federal incorporation than under State law.

Mr. ADAMSON. I understood you to state, in answer to the chairman, that when you once secured the act compelling all to go into Federal incorporation that then you could amend and perfect it in detail as experience and study indicated. If that be true, why you might, after you once passed this law, then do something in a progressive way, and this is the crux, as I understand it, of the trouble I am putting to you right now. If in that original law you provided or omitted to provide that the commission may compel any local road to become a part of a through route or a joint rate——

Mr. LOVETT. I never meant to suggest that they become a part of any system. The independent road would be where it is now, except that it would be subject to the Interstate Commerce Commission in respect to its rates.

Mr. ADAMSON. Of course, at this time we all want them to go into interstate commerce and put an end to through routes and joint rates. If one of them builds up to a station where there is another interstate road and takes a passenger or a package, it is already interstate business. If you are going to compel everything to go into interstate commerce and the existing companies are going to do all the extending, and there is only 10 or 12 per cent interstate business, if a local company does not go into interstate business it can not live on 12 to 15 per cent.

Mr. LOVETT. That is going to be true whether you have Federal incorporation or not, because the situation is such that there are very few companies under the restrictions that exist in the various States which can build and succeed, and that is wholly without reference to whether you have Federal incorporation or not.

You mentioned a road that was commenced, or that attempted to operate, or an attempt was made to float it, and they could not get the money; and you assumed that was upon the advice of somebody, probably of some existing railroad.

Mr. ADAMSON. I do not think that is an assumption in the case I mentioned.

Mr. LOVETT. Perhaps not. But you must bear in mind that when a man goes to New York, where most people go to raise money for railroad enterprises, he is going into a community where there are on the market millions and millions of securities known to be of value. The business man who wants to invest his money—an investment, not as a speculation—can find all of the absolutely good railroad securities he probably wants to buy. If he is to take up a new railroad project that may or may not succeed, he wants something more than an investment; and under Government regulation that speculative element can not be given him any more. That is why—or one of the main reasons why—new railroads can no longer be floated independently. It will require the credit and backing of the existing systems. Why should you, being in New York, or elsewhere for that matter, take 5 per cent bonds on a new railroad down in Georgia—5 per cent bonds or 6 per cent bonds at par—on a railroad that may be a failure, when you can invest all the money you have in first-class gilt-edge established railroad securities at that rate?

Mr. ADAMSON. I understand your reasoning in that case; but suppose you take a certain premise and say three or four other corpora-

tions in that community who have their bankers in New York—and all the money is akin all over this country—and those three or four existing corporations having bankers that understand one another simply say, "That is not necessary because we can do the business." That is the trouble I speak of, and that is liable to be the case.

Mr. LOVETT. I have been rather intimate with certain banking circles in New York now for about 15 years, and maybe it is because they do not care for it, but I do not recall that they ever asked my advice about taking up a new railroad proposition. They need no advice.

Mr. ADAMSON. I do not think you would say anything against us if they had, Judge Lovett.

Mr. LOVETT. I am not sure I am so good as that. But they know; those men do not need to be told by railroad men. You can not get bankers in New York—at least, large banking houses—to take up a new and unknown and unestablished railroad enterprise when they are to get only 4 or 5 per cent on their money, when they can invest all they wish in securities they know to be good. Why should they?

Mr. ADAMSON. I have such a good opinion of you, I so like your statement, that I honestly believe, without asking, that you run good local trains so as to accommodate the local people as well as the through passengers, stopping at the stations. Is that not true?

Mr. LOVETT. Well, I am not so sure of that. Chairman Bristow, of the Kansas commission, is present, and he made us run some trains that we would not have run otherwise.

Mr. ADAMSON. That is one of the most potent influences that cause dissatisfaction of the people of the State with these consolidated systems. They forget about the local communities and give their attention to the through travel and let the local people, who have to make the verdicts for them, who give them a local patronage, and on whom they depend a great deal, let them have second-class cars and let them go in town before day and return after night, and run all their good trains through at top speed. That is the most provoking thing I have seen operated in local communities. Through that the railroads arouse a great deal of what they call unjust, oppressive legislation.

Mr. LOVETT. Undoubtedly that is true. It costs a lot of money to run trains, especially on the eight-hour basis, but we do try to take care of our local business. Our business comes from them, whether State or interstate. The business arises on our line, and we try hard to take care of it, and we do a good deal of it that does not pay us. We do not always do as much as some of the commissions think we should, and perhaps not as much as we should, but we try.

Mr. ADAMSON. If you have a couple of good towns within 100 miles of each other, doing a tremendous business and paying you lots of money, you can afford to accommodate the people between, you know, because the doctrine that the two cities ought to keep up the wagon road between.

Mr. LOVETT. We are very keen to develop our local business.

Mr. ADAMSON. It is apparent to you and to the chairman, who is a most advanced apostle of this innovation, who admits there will be some difficulty in getting the people and Congress to agree to this scheme at once—and it may be an indefinite length of time before it is secured—in view of those difficulties had we not better sort of

study about what we certainly can do and try to do the things that are needed—regulation of commerce, keeping the railroads alive and prosperous? For instance, do you know of any power, any regulatory power, that Congress, direct or through a commission, could exercise over Federal incorporations that it can not now exercise in controlling the local corporations, in regulating them, if it makes up its mind to do it?

Mr. LOVERT. Yes; I am afraid, as I indicated in my statement yesterday, that a State might be able to repeal the charter of its corporations and in that way defeat the object of Congress.

(Thereupon, at 1 o'clock p. m., the committee adjourned until tomorrow, Thursday, March 22, 1917, at 10 o'clock a. m.)

## INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT CONTROL AND REGULATION.

THURSDAY, MARCH 22, 1917.

UNITED STATES SENATE,  
JOINT SUBCOMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The joint committee met at 10 o'clock a. m., Hon. William C. Adamson (vice chairman) presiding.

Mr. ADAMSON. Judge Lovett, there is no consideration of courtesy now that prevent us going ahead. I secured the order of the committee yesterday that whoever was here might go ahead and meet.

When we suspended yesterday you were answering a question about the Texas situation. I had asked you if it were not possible at present, if Congress so willed, to regulate all the carriers as effectually as if they were under Federal charters; and you said except in the case of Texas, where they threatened to forfeit the charter if they complied with Federal regulation.

Mr. LOVETT. I do not recall that I specially mentioned Texas in that connection, but, however, that may be—

Mr. ADAMSON. Here is the way you stated it: That a State might forfeit a charter and that Texas had already threatened to do it.

Mr. LOVETT. Yes; but I had not finished my answer to your question.

Mr. ADAMSON. Very well; proceed.

Mr. LOVETT. I have no doubt that Congress has the power to accomplish all the objects I have indicated as being necessary by legislation with respect to State corporations, except where States have reserved, either in the constitution or in the charter of the company or in some general law under which railroad companies have been incorporated, the right to alter, amend, or repeal the charter of railroad companies—and most of them have reserved that power. In those cases, as I indicated in my direct statement, I believe it would be possible for a State to repeal the charter of any railroad company which issued securities or obeyed a Federal law with respect to the issue or sale of securities rather than the law of the State. That, to my mind, is the only substantial difficulty. I will not say "It is the only substantial difficulty," but it is the most serious difficulty that occurs to me in the way of legislation by Congress designed to carry out these reforms, by operating upon the existing State corporations. There are a great many inconveniences and handicaps that I can foresee would occur but which would not defeat the object of Congress. For instance, I believe one great

advantage of Federal incorporation would be in the fact that every railroad corporation in the United States would have the same power and be governed by the same law with respect to the issue and sale of securities.

Mr. ADAMSON. But I said "Congress"; I did not say "the present law," you know. I said the present instrumentalities could be as effectually regulated through the power of Congress as if they were Federal corporations. For instance, the charter you speak of is a State law; and any reservation in it is a State law. Anything that Congress does to regulate interstate commerce is a Federal law, to which every State law must bow. Now, if we see proper to legislate just as fully as Congress desires to do—it may be to the extent you wish, that they shall do so about stocks and bonds—would it make any difference whether a State railroad charter stood in the face of that?

Mr. LOVETT. In other words, you ask whether, with such a law by Congress, the State could repeal that charter—which would kill the corporation?

Mr. ADAMSON. Could anything in that charter stand in the way of regulation by Congress if Congress attempted to regulate that carrier as it now exists?

Mr. LOVETT. I am afraid the right of repeal would stand in the way.

Mr. ADAMSON. The power to regulate commerce applies universally in a plenary manner to every instrumentality engaged in interstate commerce, whether it is a corporation, an artificial person, or a natural person. As I understand it, the Federal law superadds, if I may so speak, to the duties and requirements of the State law, whether it is an individual or a corporation, and nullifies every local requirement inconsistent with the Federal law. For instance, you say the State could repeal the charter, which would kill the corporation. A State may kill a man, but if it is in violation of a Federal law it can not do so; we take it to the Federal court and save him. Now, it seems to me—and I just ask you if you will not agree with me—that if a State, in resistance of a regulation by Congress, should pass a law repealing a charter, the property rights in that road could not appeal to a Federal court and have a receiver appointed and an order entered that that road be operated until the matter could be settled and thus nullify entirely the act repealing the charter in that way?

Mr. LOVETT. If the State should repeal the charter, undoubtedly a receiver would be appointed. That would have to be done in order to administer the road. But that would not accomplish the financing of the enterprise.

Mr. ADAMSON. I understand.

Mr. LOVETT. To answer your question further, it is quite possible that if an act of Congress should go so far as to declare that any State law or any action of any State designed to repeal the charter of a railroad company should be void as an interference with interstate commerce, that might meet the difficulty. But that would be going too far.

Mr. ADAMSON. Well, I do not know. Your proposition is to compel, without even a vote of the directors or stockholders or the con-

sent of the State or anyone else, all these people to change their clothes and make them a Federal corporation. I do not see how anything could go further than that.

Mr. LOVETT. That is not going as far as your proposition, I think.

Mr. ADAMSON. If that does not nullify a State charter, I do not know what would.

Mr. LOVETT. Oh, yes; it would nullify State charters. But what I mean is that maybe there are some State charters that ought to be forfeited by the State some time; and, in order to prevent a State from forfeiting a charter for obeying a Federal law, you would have to make your prohibition so broad that it would prevent the forfeiture of a charter for any purpose.

Mr. ADAMSON. I do not want to submit any drafts of proposed law to you in view of the bad luck our illustrious chairman had in submitting his bills to you yesterday.

Mr. LOVETT. They were interesting.

Mr. ADAMSON. But I suppose Congress, in passing a general provision for the regulation of securities, should do something like this—I do not say just this: If the charter of any carrier engaged in interstate commerce shall be forfeited, repealed, impaired, or restricted in any way by State action, because of interstate regulation by the Federal Government, a receiver shall at once be appointed by the United States court and the receiver shall, under the direction of the court, operate the property under the terms of the original charter and in compliance with the requirements of Federal regulation until the railroad company shall be reorganized under either State or Federal charter?

Mr. LOVETT. I think, Judge, that would be making effective the action of the State in forfeiting the charter of the company. In other words, take a State railroad corporation in a situation presented under such a law as that. The State authorities would intimate to the railroad company that "If you issue these securities we will take steps to forfeit your charter." The railroad company would see that in case the charter was forfeited it would lose control of its property, and a receiver would take charge of it indefinitely, they certainly would not issue the securities and thereby incur the disaster of a receivership.

Mr. ADAMSON. They would operate under Federal regulation.

Mr. LOVETT. No. The receiver would operate for them. They could not issue stock or bonds; in other words, the receivership would mean bankruptcy for the road.

Mr. ADAMSON. I will make two more suggestions. The alternative you stated yourself, and therefore I do not propose it in submitting this to you; that is, that it would prevent the forfeiture of any charter, which of course would simply mean that from now on these corporations are, in effect, Federal corporations. Now, your proposition is to have a general incorporation act and to compel—I did not mean to say "your proposition," but I will say "your suggestion"—all common carriers at present to incorporate under Federal law. If that can be done at all, why have so much machinery and circumlocution about it? Why not just declare them, in effect, Federal corporations and be done with it? For instance, why not have something like this—short and sweet: "All carriers subject to the act to

regulate commerce shall immediately register with the Interstate Commerce Commission as Federal corporations and shall immediately become Federal corporations, with all the powers and privileges conferred by their charters and such others as may be imposed, directly or indirectly, by Congress, but shall be exempt from all duties and requirements of their charters and all State laws inconsistent with complete Federal regulation." What is the reason that would not do your work in short order?

Mr. LOVETT. That would be satisfactory to me.

Mr. ADAMSON. I should think so. I will favor that in preference to the other myself.

Mr. LOVETT. I am not in favor of any circumlocution about it. My idea would be that there should be a law that would define the powers of these corporations—

Mr. ADAMSON. Do you not believe, Judge, that you would divest the subject of more difficulties and smooth the path for Federal corporation by putting it this way: "Any existing State corporation engaged in transporting interstate commerce may, on unanimous vote of the directors and stockholders and with the consent of the State which chartered it, register with the Interstate Commerce Commission as a Federal corporation and shall immediately become a Federal," etc., just reading as the other did? One would be optional and the other compulsory.

Mr. LOVETT. I believe the State in many cases would not consent, and therefore I do not believe that would get us anywhere.

Mr. ADAMSON. Then, would you not encounter an insurmountable constitutional difficulty if you attempted to compel Federal incorporation when the State which chartered it, and together with it grew up in reciprocal rights, and without the consent of the stockholders—do you not think that would be depriving the people of something improperly without due process of law and without their consent?

Mr. LOVETT. No. I believe it is perfectly consistent with the Constitution, and I can not, myself, see any constitutional objection. I believe, Judge Adamson, if you will allow me—

Mr. ADAMSON. I understand your argument, Judge, that when we signed the Constitution, we agreed to be regulated by Congress, but that means reasonable regulation; and, that being true, do you think the court would hold so revolutionary a course, without the consent of anybody, to be valid? That would amount to just taking it out of the State jurisdiction and putting it into the Federal jurisdiction.

Mr. LOVETT. I am about as confident as one can be about the decision of a court, that they would sustain that. I believe, Judge Adamson, that a very important factor in any system of Federal incorporation of railroad companies is that it shall be uniform; that it shall apply to all railroad companies; that everybody who deals with the corporation shall know exactly the powers that it has; shall know the steps by which it must proceed to issue securities, and how it is regulated. Instead of having investors considering conflicting laws and questions of power under a great many different States it is simplified if all is embraced in one act of Congress, and flows from one source, with all corporations on precisely the same footing, so far as their corporate powers with respect to financial operations are

concerned. I believe that is a very important aspect for any system of Federal incorporation. Instead of merely allowing the privilege of becoming a Federal corporation, with the powers conferred by the State, and with such as may be added by Congress, compel it and give all the same rule.

Mr. ADAMSON. Now, you insist, as I understand you—and the Supreme Court has said some things that you think squint in that direction—that if you have a Federal charter it will abolish the distinction between interstate and intrastate transportation?

Mr. LOVETT. That can be abolished without a Federal charter.

Mr. ADAMSON. Do you mean to say that you understand, from cases like the Shreveport case and others, that it is necessary to the regulation of interstate commerce that the people within each State should have just the same rates, under similar circumstances and conditions, that other States have on intrastate transportation?

Mr. LOVETT. Oh, no; not at all.

Mr. ADAMSON. Do you mean to say that in a haul between two points a hundred miles apart in Georgia, the rates and practices should be equivalent, if the circumstances and conditions are the same, as between two points a hundred miles apart in Alabama?

Mr. LOVETT. Not at all.

Mr. ADAMSON. Then, what you mean is that the intrastate rates in a State shall be practically equivalent to the interstate rates in that State?

Mr. LOVETT. No; I do not mean that.

Mr. ADAMSON. Then why do you insist that it is necessary to interfere with orders inside of a State in order to regulate interstate commerce?

Mr. LOVETT. Under the existing system of regulation by the Interstate Commerce Commission it is not pretended, and never has been, that the same rate per ton per mile, or the same rate for the same distance, shall apply everywhere.

Mr. ADAMSON. Oh, not exactly the same.

Mr. LOVETT. Nor substantially the same. There is the same variety in the rates now as there was under the private management of the traffic men. In various sections of the country the schedule of rates or the general level of rates is much higher than in another section. The rates are adjusted with reference to trade relations and competition of markets, etc. All the circumstances that enter into a rate and to the relations of rates exist under the present system of regulation as under the private rate-making system. What I mean is this—to make a general answer to your question—that railroads engaged in interstate commerce are instrumentalities of interstate commerce. Congress has the right to regulate them as such, and it has the right if it deems it necessary in order to make the regulation effective to exclusively regulate them. In my view, Congress, without creating a Federal corporation, can take absolutely the regulation of existing railroad companies away from the States. How far Congress will go in that direction is a matter intrusted to the discretion of Congress, which is almost unlimited with respect to interstate commerce.

Now, if Congress concludes or authorizes the commission to decide whether it is necessary to take control of the State rates, in order to make interstate regulation effective, I believe it has the power to

do it—which comes from the fact, as I indicated in my direct statement, that Congress is vested by the Constitution with the power to regulate interstate commerce, with the right to establish post roads, with the duty of providing for the national defense, with the power of making war; and all of these powers enter into this question. Now, if Congress should conclude that, in carrying into effect these powers that are expressly granted, it is necessary to take over the exclusive regulation of railroads as instrumentalities of interstate commerce, and as agencies for these other purposes, why, it supersedes the control of that subject by the States.

Mr. ADAMSON. Then, your idea is that the control applies to the instrumental vehicle through its whole course?

Mr. LOVETT. Yes.

Mr. ADAMSON. And that the regulation should be under that control, for the same reason?

Mr. LOVETT. It ought to be, in order to be effective.

Mr. ADAMSON. Why should the control of a rate between Atlanta and Macon, Ga., have anything to do with a rate from New York to either one of those points?

Mr. LOVETT. I am not familiar with the rate situation in that particular locality.

Mr. ADAMSON. Well, any other State; just point to any State.

Mr. LOVETT. I know of a great many situations where the interstate rate adjustment is controlled entirely by State rates. I can imagine that a rate between Buffalo, N. Y., and New York City might upset the whole rate situation in trunk-line territory.

Mr. ADAMSON. If New York State is so prosperous, and the business is so prosperous that the railroad can operate more cheaply between two points in that State, is it right to make them pay for the deficiencies in some other State through which the railroad runs?

Mr. LOVETT. When the Constitution was adopted certain special and peculiar rights that a particular State might enjoy with respect to interstate commerce, were surrendered as a consideration for other rights, resulting from the Union.

Mr. ADAMSON. Reasonable regulation.

Mr. LOVETT. So I should answer your question by saying that if New York is so situated that it can make a rate that will benefit it, and injure all the rest of the country, it ought not to be allowed to make it.

Mr. ADAMSON. I am speaking of local traffic. Is it right that she should not be allowed to do her local business at a lower rate?

Mr. LOVETT. Not if it injures the rest of the country.

Mr. ADAMSON. How would it injure the rest of the country?

Mr. LOVETT. I can imagine, for instance, on grain—

Mr. ADAMSON. Before you answer that, if I understand correctly, in the Sherevport case there was a point in one State which made a lower rate to a point in that State than it did to a point out of the State, other circumstances and conditions being similar, and that did affect interstate commerce, but not the New York case.

Mr. LOVETT. Let me say, at the outset, that I do not limit my reason for Congress to regulate this subject merely to its right to regulation of the instrumentality. It has the right to regulate the rate and the interstate commerce included in it; and included in that

is the right to regulate all the instrumentalities of interstate commerce. The Shreveport case, as I understand it, arose from the fact that the Texas commission made certain rates from Dallas and Houston, cities and jobbing centers in that State, to certain points, whereas the prevailing interstate rates from Shreveport to those points were very much higher, and the Texas commission coerced the railroads into maintaining this relative rate situation. They intended that Houston and Dallas should do the business of that territory, and the railroads well understood that if they reduced the interstate rates so as to permit Shreveport to enter that territory, the Texas commission would further cut the local rates so as to preserve the relative difference against Shreveport. That is the situation, as I understand it.

Mr. ADAMSON. That was differentiating between two points in the State, and one point in the State and one point out of the State; in other words, interstate commerce.

Mr. LOVETT. To state it entirely accurately, it was shutting Shreveport out of the jobbing business of Texas.

Mr. ADAMSON. That was the effect of it.

Mr. LOVETT. And the object.

Mr. ADAMSON. And the way by which that was effected was to put a lower rate into the State than there was coming from the other State?

Mr. LOVETT. That is the way it was made effective, yes.

Mr. ADAMSON. Now, Judge, I understand that the way States unsettle or interfere with interstate rates is by making the intrastate rates too low. That is generally the manifestation of it, is it not?

Mr. LOVETT. I have known of instances where a railroad company joined in an interstate rate or accepted as its share of an interstate rate certain divisions which were necessary for the interstate rate to be made, whereupon the commission reduced that road's local rates on entirely different articles as punishment.

Mr. ADAMSON. Are you ever troubled by intrastate rates that are made too high?

Mr. LOVETT. Intrastate rates?

Mr. ADAMSON. Yes. You never encounter intrastate rates that are too high to interfere with the regulation of interstate commerce, do you?

Mr. LOVETT. I do not recall any such case.

Mr. ADAMSON. I do not.

Mr. LOVETT. They may exist.

Mr. ADAMSON. The troublesome rates are the rates that they make too low?

Mr. LOVETT. I do not know any railroad company that has suffered from rates that were too high.

Mr. ADAMSON. I understand.

Mr. LOVETT. There may be such cases, but if a rate is kept up on one road and cut on another, the road with the high rate would suffer.

Mr. ADAMSON. I understand; but I just wanted to understand clearly the source of the trouble about these intrastate rates that dislocate the interstate rates. It is always that the State commissions or authorities make them too low, and never too high within the State. Now, Judge, you stated the other day something about whether or not rates were ever based on the consideration of secur-

ities—stocks and bonds. I do not remember accurately whether you said the commission never did, or whether the roads, in making the initial rate, never did it. Which was that?

Mr. LOVETT. What I meant, Mr. Chairman, was that I have never known a case where railroads themselves made rates based upon the amount of stock or bonds, or paid any attention to the amount of stock or bonds, in making rates. Of course, I have known of cases where, in controversies with regulating tribunals, the question of revenue was in litigation, and the amount of stock and bonds and fixed charges and dividends required, etc., entered into the discussion and into the consideration. But I have never known where any traffic manager or rate-making authority of a railroad company paid any attention to the amount of securities. I believe it is safe to say, from my knowledge of the men and from my connection with rate making, that probably up to 15 years ago the majority of traffic men who made the rates really did not know how much stock and bonds the company had or what the dividend or interest requirements were. They did not deal with that subject. Within the last 15 or 20 years under Government regulation they have had to pay more attention to stock and bonds, etc.

Mr. ADAMSON. When you initiate a rate—of course, some people sarcastically say that you take “all the traffic will bear”—I presume it is true that you consider the traffic situation and fix a rate according to the circumstances which you think will be remunerative and excite the least opposition and objection?

Mr. LOVETT. J. C. Stubbs, who is, I believe, generally held responsible for that phrase “all the traffic will bear”—though he denies that and makes some modification of it by saying, “what the traffic ought to bear”—relates an incident which I think illustrates rate growth very well, if I may take the time to recite it.

He said that many years ago a gardener or ranchman, as they are called in California, came into his office when he was the head of the traffic department of the Southern Pacific and told him that he had grown some raisins and he would like to try a shipment to the East, and wanted to know what the rate would be. At that time the charge for foreign raisins from the East to California was \$3 per hundred. Stubbs asked the man what rate he thought he ought to pay for raisins per carload eastbound. The man told him he could afford to pay \$1.50 per hundred, and the rate was at once fixed at \$1.50 per hundred; and the rate ever since for raisins from California to the East has not been over \$1.50, whereas the westbound rate was \$3 per hundred.

I fancy that if you could go back into the history of every rate made it would be found that it was largely prescribed by the shipper.

Mr. ADAMSON. Judge, if this transition is made from State to Federal incorporation, I suppose it would be expected that provision would be made for acquiring other roads, extending the road, making mergers with extension lines, just as they may do at present?

Mr. LOVETT. I assume, of course, that such a law would provide, first, for the incorporation of new companies. Then it would provide for the reincorporation of existing companies. It would then prescribe, I assume, what the powers of these corporations should be, specify them in the terms with which we are familiar in various

State laws, and specify the powers that the corporations should have, whether new companies or reincorporated companies. I assume it would also provide for the merging or consolidation either of new companies or of existing companies or of new companies with existing companies; and I take it that in that connection it would not permit any merger or consolidation or the acquisition of one railroad by another except upon approval of the Interstate Commerce Commission.

Mr. ADAMSON. I understand. It would provide a method?

Mr. LOVETT. Yes; and it would also specify to what, if any, extent the acquisition or consolidation of lines that were competitive should be allowed. I assume it would not allow the consolidation of lines that are substantially competitive. My own judgment, as I indicated the other day, would be against the consolidation of competing lines.

Mr. ADAMSON. You would not want to repeal the antitrust law while you were getting rid of the State regulations?

Mr. LOVETT. I would not. I do not believe, though, that it ought to apply to railroads to the same extent it does to a good many other interests. I suppose some other interests think the very reverse. But I believe the Interstate Commerce Commission should be authorized, when an application is made for consolidation of lines that are in a remote degree competitive, to consider whether the public interest will be promoted by the advantages of the consolidation more than it would be by the competition that exists.

Mr. ADAMSON. The reason I asked you in regard to the consolidation and acquirement of other roads was not to go into the details of organization but as a foundation for a further question. As I understand, your idea of transferring a company from one authority to another is that you would not affect the relative position of creditors and debtors and stockholders, but simply change the name and the control, and let the status quo be maintained. Now, that being true, that company's credit would be just like it was before; but if you acquire another company, the first one being like this southwestern company reported by the Commerce Commission—I believe they said it was worth \$12,000,000; it had cost \$30,000,000, and it was bonded for \$42,000,000—if you take that in as a Federal corporation, as it is, its credit or discredit would remain the same. But, then, suppose it proceeds to merge or acquire another road that is solvent. Would you bring it in on the same basis or would you average up the two, or how would you do that to improve the credit of either?

Mr. LOVETT. I would not, as I indicated yesterday, undertake to provide for any consolidation in the process of federalizing the companies. I would first have them become Federal corporations. I should be careful in the act to have a provision that would leave all questions as to the validity of their stock or the bonds and all questions as to liability precisely as they are.

Mr. ADAMSON. Judge, I understand you on that, and I want to ask you—

Mr. HAMILTON. I beg your pardon, but I understood Judge Lovett was going a little further in answering your question.

Mr. LOVETT. I was.

Mr. HAMILTON. I should like to hear that, if you have no objection.

Mr. ADAMSON. I beg your pardon; I understood that he was merely referring to what he said yesterday. Go ahead.

Mr. LOVETT. I was stating that as a basis for a further answer I was going to make to your question.

After these corporations are federalized, and they come to a point where it is proposed to merge the corporations you have described, by consolidation or otherwise, that subject should be dealt with specially. Whether the merger or consolidation of an insolvent corporation with a solvent corporation is to be allowed is a question for the Interstate Commerce Commission; and it ought to be left to the Interstate Commerce Commission to determine whether such consolidation ought to be allowed under such circumstances. You can not foresee—nobody can foresee—the various questions that will arise in working out any system of consolidation. It must be dealt with at the time by a tribunal that you would intrust it to.

Mr. ADAMSON. Of course, you can not foresee all of those things. But this committee is not legislating; it is only going to advise Congress. Congress will ask us a lot of questions when we report about what is going to happen, and some are going to say, "Yes; the very thing Judge Lovett states is what we are afraid of, that they will blindfold us and slip this thing through into Federal authority, and afterwards you will amend the law and do all the rest to us." That is exactly what they will say. But this is what I mean: You have a right, and we have, although we can not prescribe the legislation, to foresee what the subsequent steps might be; and you say that the main purpose of this is to help the finances of the railroads; that is the great desideratum. Now, if you take in that insolvent corporation that I have mentioned—and there are others similar to it in the country—its credit certainly is not helped by the transition from State to Federal incorporation. Then, if it is going to be allowed by subsequent legislation to merge with other companies, these questions will arise about how you are going to arrange them, and how that is going to help the credit of either, and bearing in mind the necessity for financing these railroads, I think it proper for us to anticipate and consider all of these things.

Mr. LOVETT. The only answer to that, Judge Adamson, is that as it is now, Congress has no control over them; no agency to pass upon consolidations at all. The matter is left entirely to the States. All the things done in the past have been done, of course, under authority of the States. These dangers you apprehend are dangers that exist now. Perhaps there are more restrictions upon some of them now than formerly.

Mr. ADAMSON. That is exactly what I say, Judge. I say we will avoid the apprehension by just doing it directly, under present conditions.

Mr. LOVETT. The laws of the States vary. Some States will permit almost any kind of consolidation.

Mr. ADAMSON. I am talking about a law of Congress.

Mr. LOVETT. I do not know any State that in authorizing consolidations undertakes to review the validity of the securities or to determine whether there is wind and water in the stocks and bonds, but they generally content themselves with providing, I believe, that in

the process of consolidation the aggregate amount par value of securities shall not be increased.

Mr. ADAMSON. But, judge, we are not comparing the present action of the States with what may be done on either line by Congress. What we are comparing in your proposition for Federal incorporation and my proposition to exercise the existing power of Congress under the Constitution to regulate them as they are.

Mr. LOVETT. As I have answered earlier to-day, I believe, Congress has power to deal with the subject just as fully with existing corporations as it can by Federal incorporation, but not as well, not as effectively, not as orderly; not without a great many more difficulties and complications than would be encountered under Federal incorporation. But so far as dealing with consolidations under the act of Congress, my judgment would be to intrust that to the Interstate Commerce Commission when it is called upon to approve the consolidation.

Mr. ADAMSON. Under either plan?

Mr. LOVETT. Under either plan. You have got to do it. Congress can not itself, I take it, deal with such a complex subject to meet every possible case. I think this, Judge Adamson, if I may be permitted one further observation: The great trouble the railroads are suffering from is that in most of this regulating legislation the eye of the law-making power is centered upon some apprehended evil, such as you apprehend with respect to these mergers, and the legislation built with that central idea. In that way, perhaps, you reach and stop one, two, or half a dozen crooked transactions. While you are doing that you are hampering 99 per cent of the transportation interests of the country.

Mr. ADAMSON. Your legislation in that instance follows the unfortunate example of the one-eyed doe grazing with her blind side next to the ocean, not knowing that people can slip around in a boat and shoot her in the water.

Mr. LOVETT. I remember, if I may refer to Texas again, that Rev. Mr. Parker was elected to the legislature some years ago from Palestine, which is a point on the International & Great Northern. The trains that run from Galveston to St. Louis leaving Galveston in the early evening would pass Palestine at a very inconvenient hour in the night or morning. The first bill he introduced when he got to Austin was to prohibit any railroad company from starting a train from any station between 10 o'clock at night and 6 o'clock in the morning. He was thinking of Palestine only. Much of our legislation is framed with an eye to a single situation.

Mr. ADAMSON. I know several towns in that State, and I am in sympathy with that perfectly.

Judge, I interrupted the chairman, by his permission, when he was cross-examining you yesterday, to ask you about what remnants of conduct your proposition would leave to the State commissions, and, as I understand you, you decided a great many benevolent acts of a public nature that they might perform, but I do not remember any of them that related to railroads. Is it your idea that you are willing for the State commissions to regulate everything but railroads?

Mr. LOVETT. No. I stated yesterday—and I could add a great many items to the list, and I will add some now—I stated yesterday

that they would have the right to regulate the matter of grade crossings. They should have the right to regulate the matter of stations.

Mr. ADAMSON. Is it necessary for Congress to leave that to them?

Mr. LOVETT. Why, I take it that it depends entirely upon the act of Congress.

Mr. ADAMSON. Of course; we are talking about making an act of Congress.

Mr. LOVETT. Yes. Now, it is for Congress to say what shall be left.

Mr. ADAMSON. That is the purpose for which we are sitting here.

Mr. LOVETT. I think Congress should leave those. If Congress incorporates a railroad company it ought to say what the powers of that railroad company shall be and to what extent it shall be subject to regulation by the States. I believe that all of these local matters—and it is impossible to forecast all of them—ought to be left to the States. I will run over some of them for a moment: The matter of grade crossings, the matter of stations, the matter of sidings and facilities for shippers, the matter of trains blocking crossings. I may mention another matter about which I am sure you and I are in accord, the "Jim Crow" law. Personally I should be very much opposed to any law of Congress incorporating railroads that did not leave in the States full power over the classification of passengers on trains. I would not disturb the "Jim Crow" law. There are a great many other purely local matters that I think ought to be left to the States.

Mr. ESCH. Sanitation of depots?

Mr. LOVETT. Yes. It is impossible to—

Mr. HAMILTON. You mentioned taxation, did you not?

Mr. LOVETT. Taxation; I should leave taxation to the States.

Mr. ADAMSON. I am talking about the powers of the State commissions now. They do not regulate taxation.

Mr. LOVETT. Well, I am leaving it to the States; the States are entitled to adopt any agency they choose. They can leave it to the commission if they wish. Many of the State commissions do deal with the question of taxation by fixing the value of the railroads.

Mr. ADAMSON. Do you think you would adhere, on reflection, to the response you made Mr. Esch that the sanitation of depots, the matter of public health accompanying interstate transportation, should be left to the States?

Mr. LOVETT. I see no reason why the States should not be permitted to regulate that.

Mr. ADAMSON. We have a Public Health Service here, built up on the idea that our control over interstate commerce carried with it the obligation to protect the health along that commerce.

Mr. LOVETT. If Congress prefers it that way, of course it is for Congress to say.

Mr. ESCH. If you will pardon me, I think the Public Health Service now looks after the water supply on passenger trains, and I think it has some supervision with reference to cleaning up Pullman sleeping cars, and so on.

Mr. LOVETT. I do not think so. Mr. Markham, you know about that.

Mr. ADAMSON. The House passed a bill twice, I believe, which failed to meet with a response in the Senate, to authorize the Public

Health Service to clean up all these depots on interstate transportation lines.

Mr. LOVETT. I do not understand that there is any national regulation of sanitation of trains or stations. That is left to the States.

Mr. ADAMSON. Judge, it might be that some local conduct, either under State statute or without it, would interfere with interstate transportation at the grade crossings. It is necessary, to be competent, for Congress to take charge of that, is it not?

Mr. LOVETT. That depends, Judge Adamson. As it is now, the States require a good many things—the matter of stations, and various local measures—that some railroad men think are a little unjust. But they are not vital, and I believe the States should be left the regulation of all local matters that are not vital to the system of national regulation. It is possible that some State might become so discriminating and so unjust in its taxation—might seek to make other States contribute through the railroads to its revenues—that Congress would finally conclude to take over the subject of fixing taxation; not take it away from the States, but prevent discrimination. I think that is extremely remote. They might become so oppressive in their local requirements that it would be unjust to other States interested in the transportation line, but that is very remote.

Mr. ADAMSON. What is your idea as to provision for litigation? Would all those corporations have to be sued in Federal courts?

Mr. LOVETT. No; not one. I would distinctly provide—I stated that in my direct statement to the committee—that removal of suits to Federal courts by these corporations by reason of the fact that they are Federal corporations should not be permitted. As a matter of fact, under my idea of Federal incorporation, there would be very much less litigation carried to the Federal courts than is now carried there. As it is now, the corporation created in one State and operating in several other States can remove to the Federal courts its litigation in the other States. If it were a Federal corporation, then under my idea of what the Federal law should provide it could not remove any of those suits to the Federal courts. I would not permit it to remove any suit to the Federal court that any individual would not be allowed to remove. In other words, I would confine it to constitutional questions, question under the Federal law.

Mr. ADAMSON. Judge, so far as constitutional questions are concerned, a Federal charter enacted by Congress would merely be a law of Congress.

Mr. LOVETT. Yes.

Mr. ADAMSON. Whether under that changed system or this system, would any constitutional question be changed as between a State and Federal authority? Would not the Federal corporation be subject to the same constitutional questions that the State corporation would be subject to?

Mr. LOVETT. I should think so. Of course, that is a far-reaching question.

Mr. ADAMSON. If there is any reason in the Constitution now why the Federal Government could not do something because a State has exclusive authority, would not it remain so? Has the paternity of the corporation anything to do with its powers under the Constitution?

Mr. LOVETT. I should think not. I would like to state there, Mr. Chairman, if I may, that the central idea, the controlling thought with me, and with the other railroad executives, so far as I know, is to unify the system of regulation. So far as I am concerned, I am perfectly willing that instead of Congress exercising the power you may give the whole power to some particular State; I do not care.

Mr. ADAMSON. So it is one authority?

Mr. LOVETT. So it is one authority. I do not care who exercises the authority. But it ought to be a single authority. It is a subject that can not properly be regulated by a dozen or half a dozen different governments. It ought to be regulated by one only, and so far as I am concerned I do not care which one.

Mr. ADAMSON. A good deal has been said during your testimony about taxation, and some gentleman suggested that there be a general arrangement under the law of Congress so as to apportion the line among the States, and some other gentleman suggested that they collect and pay back to the States a portion.

Mr. LOVETT. That was Senator Newlands's suggestion, I think.

Mr. ADAMSON. You think it would be better just to leave the question of taxation alone, do you not?

Mr. LOVETT. I do. This is a difficult enough problem as it is. I would not at this stage undertake to change the system of taxation. I do not believe anybody has ever dreamed that the taxes of a State would be lessened in any way by Federal incorporation. Certainly we expect nothing of that sort. I would leave the question of taxation precisely where it is. I am not sure but what it would be fairer and more just to everybody if every railroad was valued as a unit—because we all know that that is what it is—and that aggregate value apportioned for the purpose of taxation or assigned for the purpose of taxation to the various States in which it was situated on a track-mileage basis. But that is a theory that perhaps was not worth while to mention.

Mr. ADAMSON. But you would not think it necessary or wise for Congress to assume to become the administrator for the States to collect and pay back the taxes?

Mr. LOVETT. I certainly would not.

Mr. ADAMSON. Judge, are you, in advocating this Federal incorporation, acting for yourself, or did your stockholders or directors delegate you to do it?

Mr. LOVETT. I am acting for myself.

Mr. ADAMSON. Has the matter of approval of an attempt to obtain a law for Federal incorporation of railroads been submitted to your board of directors?

Mr. LOVETT. It has not.

Mr. ADAMSON. Has your board adopted a resolution?

Mr. LOVETT. No.

Mr. ADAMSON. Have the stockholders?

Mr. LOVETT. No. I do not know whether the stockholders like it, and I do not know whether the directors like it. I might go further, but I will not.

Mr. ADAMSON. You have taken no steps looking to that?

Mr. LOVETT. No steps.

Mr. ADAMSON. You simply give that as your opinion?

Mr. LOVETT. Simply as my opinion as a citizen, based upon my experience in railroad administration, as to what I think is best for the interest of the railroads and for the whole country.

Mr. SIMS. Simply as a private citizen?

Mr. LOVETT. Simply as a private citizen.

Mr. ADAMSON. Do you not think the change proposed is a very fundamental change?

Mr. LOVETT. It is. It may be that my board of directors and my stockholders object to it very strenuously; I do not know and I can not help it. I can not control them and I am not binding them. I am speaking my own opinion.

Mr. ADAMSON. Do you believe that a general sweeping law such as some of you advocate here, compulsory on all companies, to go into the Federal incorporation, ought to be enacted without the action and consent of the people interested?

Mr. LOVETT. I do not say that, because I think the people interested are the public as well as the railroads. But I think it ought to be enacted without the approval or consent of the stockholders or directors.

Mr. ADAMSON. Do you not think the stockholders and directors in that railroad have a sufficient interest to give them a right to be consulted before changing the organic form of their control?

Mr. LOVETT. They have a sufficient interest, or a very large interest; but they ought not to be allowed to decide the question. I think Congress should decide it.

Mr. ADAMSON. Probably they would not have subscribed to the stock if it had been in one corporation instead of the one it is in.

Mr. LOVETT. Possibly not; but they did subscribe, and they did it with the knowledge that Congress had the power to do this, or rather, they are presumed to have had the knowledge.

Mr. ADAMSON. They were presumed to have the knowledge with regard to reasonable regulation by Congress; but what I am asking you is: Is such a fundamental change as this without their consent reasonable?

Mr. LOVETT. I believe it is.

Mr. ADAMSON. You do not propose to secure the consent of any State that chartered them?

Mr. LOVETT. No; I think the States have already consented.

Mr. ADAMSON. Touching the question of litigation, do you not think that an effort of this sort, without the consent of anybody, would produce more litigation, and longer and more bitter, than almost any other proposition you could submit?

Mr. LOVETT. I think not. I believe there would be very little litigation about it.

Mr. ADAMSON. And is there not danger that pending these changes in the possible litigation the financial status of some of these companies might suffer instead of being improved?

Mr. LOVETT. I think not. I believe that the consolidation of the New York Central and the Lake Shore a year or two ago caused more litigation than this measure would cause.

Mr. ADAMSON. Judge, the committee of executives, of which you are a member—how many does that committee consist of?

Mr. LOVETT. I beg your pardon.

Mr. ADAMSON. The committee of executives that prepared this statement?

Mr. LOVETT. How many—

Mr. ADAMSON. How many are on that committee?

Mr. LOVETT. Fifteen.

Mr. ADAMSON. How many railroads are interested in it?

Mr. LOVETT. Have you got the list, Mr. Trumbull?

Mr. TRUMBULL. I think it has been printed in the record.

Mr. LOVETT. May I refer to the list that was submitted by Mr. Thom on the first day of the hearings?

Mr. ADAMSON. Yes; if any man remembers, all right. I just wanted to get it in my head.

Mr. SIMS. Mr. Chairman, Judge Lovett just appears here as a private citizen, and what difference does it make how many men constitute this committee?

Mr. THOM. Over 90 per cent, Mr. Chairman, of the gross earnings of the railroads which earn as much or more than a million dollars a year.

Mr. ADAMSON. How many railroads are represented on the committee?

Mr. THOM. I have undertaken to file in the record a list of them.

Mr. ADAMSON. I can not undertake to know that now. I am examining the witness right now.

Mr. THOM. About 60 systems, Mr. Trumbull says. He is chairman of the committee.

Mr. ADAMSON. Fifteen men represent all of them?

Mr. THOM. Yes.

Mr. ADAMSON. Some are just representatives and not officers of the roads?

Mr. THOM. I have been—

Mr. ADAMSON. I am trying to find out how many individual railroads have representatives on this committee.

Mr. THOM. Fifteen; and each man is a railroad executive.

Mr. ADAMSON. He must, then, represent some other railroads than the one with which he is connected.

Mr. THOM. Yes; but this committee representing 60, say—

Mr. ADAMSON. Well, I understand there are 15 men who represent personally 15 railroads, and, by selection, they represent some other railroads.

Mr. THOM. But some of those men may be connected with more than one system—have an office with them.

Mr. LOVETT. I think I can clear up, if I may be permitted to do so, the matter which you have in mind. Several years ago the situation with respect to the railroads, as affected by legislation, seemed to be so bad that a number of us thought we ought to consider it in conference and try to work out some system of constructive legislation to suggest. There were a number of conferences, and a number of railroad officers joined in them. At first, I believe, Mr. Walker D. Hines was chairman of the committee, or perhaps he was counsel for the committee. Certain railroad officers were on the committee with him, including Mr. Trumbull, from the first; and the various railroads were invited into the organization, if we may call it such, to deal with these questions. We had meetings occasionally, and there was some expense. We had to employ clerks and counsel and incur

other expenses, which are all open, and all subject to anybody's inspection. Finally, we considered that we should deal with it in a more thorough manner than had been done up to that time; and there was a committee selected, composed of Mr. Loree, of the Delaware & Hudson, Mr. Johnson, of the Norfolk & Western, and myself, to consider the kind of organization or association we should have. We considered the matter and agreed that there should be an advisory committee of railroad executives, and consider and advise from the standpoint of the railroads; and also that there should be a law committee to consider legal questions. Thus this advisory committee was formed, composed of 15 members, whose names have been given. I am a member and Mr. Trumbull is chairman. The law committee was formed, with Mr. Thom as chairman. The various officers of the railroads were invited to attend the conferences and to join this association. We did not have any articles of association. I think nearly 90 per cent, as represented by the gross earnings of the railroads of the United States, joined.

Mr. ADAMSON. How about the number of railroads?

Mr. LOVETT. I can not answer as to that.

Mr. ADAMSON. I think a gentleman said 85 per cent of the number.

Mr. LOVETT. How many, Mr. Trumbull?

Mr. TRUMBULL. There are about 60 systems. I do not know how many corporations there are. There are a number of corporations.

Mr. LOVETT. We apportion such expenses as are incurred on the basis of gross earnings, each company contributing to the expenses in proportion to its gross earnings. A full account is kept of the expenses for counsel fees, and all other purposes, and generally, about once a year, there is a report made of the expenses, and the accounts are audited.

Mr. ADAMSON. I do not doubt the regularity of all of that.

Mr. LOVETT. As I said a moment ago, anybody can see the accounts covering the expenses.

Mr. ADAMSON. I do not care about that.

Mr. LOVETT. Then this committee considered how to solve the railroad problem.

Mr. ADAMSON. Are they unanimous—that committee of 15—on the proposition which you have enunciated?

Mr. LOVETT. No; we had various conferences, not only with the 15, but the various officials representing the railroads were called in, and a general program was submitted. What we finally agreed to recommend was the result of discussion of the subject by various men, and involved concessions of particular views. There are many railroad companies that really would prefer to continue as they are.

Mr. ADAMSON. How many of the board of 15 failed to agree with you on the Federal incorporation idea?

Mr. LOVETT. I believe all are in agreement as to what should be done in the interests of the country. I do not want to claim any undue patriotism for the railroads—

Mr. ADAMSON. I know.

Mr. LOVETT. In this matter, but I am very greatly impressed with the patriotic manner in which it has been dealt with by the railroads.

Mr. ADAMSON. The question I have asked, however, is whether the 15 members of this committee agreed to this Federal incorporation plan?

Mr. LOVETT. I so understand.

Mr. ADAMSON. How many of them were backed by the action of their boards of directors and stockholders—any of them?

Mr. LOVETT. I do not know whether any of them submitted it to their boards of directors. Some of them may have done so. But, as I remember, some said, "If I agree to this plan, I do not know whether my board of directors will support it or not. My directors may object to it." My own opinion was—and I think it was the generally accepted view—that every man was acting for himself, and that when he should appear here as a witness he would be stating his own views.

Mr. ADAMSON. I am examining you as a witness now. I asked if you know whether any of the other representatives were supported or backed by their boards of directors and stockholders?

Mr. LOVETT. I do not know.

Mr. ADAMSON. I want to know if you know whether any of these railroad companies—if their boards of directors and stockholders have been consulted about it or not?

Mr. LOVETT. I do not know about that.

Mr. ADAMSON. Do you know why these other railroad companies which are left out did not participate with you in that movement?

Mr. LOVETT. No; I do not know what their reason was.

Mr. ADAMSON. Judge, are you a large stockholder in your company?

Mr. LOVETT. No; I am not. I own some stock.

Mr. ADAMSON. Are the 15 members of this committee large stockholders of their companies?

Mr. LOVETT. I do not know.

Mr. ADAMSON. Is it not true that most of these officials are simply elected for their merit as executive officials and do not own much interest in their companies?

Mr. LOVETT. I believe that is true of practically all of them, east and west.

Mr. ADAMSON. At least for their merits, whether they own much or not?

Mr. LOVETT. I do not know the extent of their investments.

Mr. ADAMSON. I believe you said that this committee of executives was composed of presidents and managers—high officers of the railroads?

Mr. LOVETT. Yes.

Mr. THOM. Entirely of presidents and chairmen of boards of directors.

Mr. ADAMSON. Well, high officials.

Mr. LOVETT. Executive officers, whatever their title may be.

Mr. ADAMSON. Your plan, so far as your ideas are concerned, does not contemplate progress toward Government ownership?

Mr. LOVETT. No.

Mr. ADAMSON. You would not advocate that?

Mr. LOVETT. No.

Mr. ADAMSON. But Federal incorporation would greatly facilitate it, if the Government should conclude to do it, would it not?

Mr. LOVETT. I do not see that it would.

Mr. ADAMSON. I suppose it is unnecessary to discuss with you in detail as to what you would put in your charter, your idea being

that if we once get the transition we can do what Congress wants to do?

Mr. LOVETT. Yes; I should think that the details were a matter for Congress to determine. I am interested only in the subject of unified regulation.

Mr. ADAMSON. You would want to retain the provision, I suppose, Judge, that matters passed on by the railroad commissions could be challenged in the courts, as now?

Mr. LOVETT. I think that right ought to be preserved. It is not worth a great deal practically, but still it ought to be preserved.

Mr. ADAMSON. Judge, if the commission is not materially increased and relieved, it would put the entire burden of financing the roads on them, and under either of our plans it would delay financing them, would it not?

Mr. LOVETT. Yes; it would be impossible for the commission, as at present constituted, to take on any additional amount of work without detriment. The matter of securities is provided for in the present bill—

Mr. ADAMSON. I am very much obliged to you, Judge, for your courteous answers to my interrogatories. I will pass you on now.

Mr. SIMS. I want to ask a question or two right along that line. It is Senator Cummins's turn, but I would like to have permission to ask the questions now.

Mr. ADAMSON. You may do so.

Mr. SIMS. But it is Senator Cummins's turn.

Mr. ADAMSON. I will yield to you in my time.

Mr. SIMS. You stated you appear here as a private citizen, and as such giving your views without any authorization of your stockholders or those whom you represent. Now, are we to understand that this executive committee of which you are a member is not being represented by you here at this time?

Mr. LOVETT. Is the executive committee—

Mr. SIMS. The committee of executives, of which you say you are a member?

Mr. LOVETT. I am here as an individual and as a member of that committee and am expressing my own views, which I understand to be the views of the committee also.

Mr. SIMS. That is what I want to know. Are you not speaking in harmony with the views of the committee of executives or representatives of the 60 systems, according to Mr. Thom?

Mr. LOVETT. I understand that we are in accord. I do not recall that I have presented any view here that generally is not shared by the members of that committee.

Mr. SIMS. Are you not acting as an agent or representative or a member of that committee, in addition to what interest you may feel in the matter as a private citizen?

Mr. LOVETT. That may be a little more of a refinement than I can appreciate, Judge. While I am a member of the advisory committee of executives, I am expressing my own individual views. I would not express any view here or offer any suggestion here that I do not personally approve.

Mr. SIMS. I did not mean that for a moment, but I do certainly think we should know the capacity in which you appear.

Mr. ADAMSON. He is a witness, of course.

Mr. SIMS. I know; but he also appears as a member of a committee which is represented by an attorney, Mr. Thom, before this body, and who has represented them, I think, very ably and very capably.

Mr. LOVETT. I am sure of that.

Mr. SIMS. And I believe I ought to attach more weight to you, as being a railroad executive, than would be attached to a mere citizen, who has had country-wide experience.

Mr. LOVETT. I am a member of the advisory committee of which Mr. Trumbull is chairman, and I am expressing my individual views, which I understand to be in accord with the views of that committee. Now, as I said a moment ago, all the railroad executives will, when they come here as witnesses, come as individuals, as witnesses must come and only as they can come, expressing their individual views.

Mr. HAMILTON. You are not authorized by any action of the committee to appear as representing the views of that committee?

Mr. LOVETT. No; I am simply expressing my views, which are in accord with the views of the committee. I am not authorized by anybody to appear.

Mr. SIMS. I do not want you to misunderstand me. I do not want anyone to misunderstand it and let it go to the country that way.

Mr. LOVETT. I have no doubt that a great many railroad executives have talked with their boards about this matter.

Mr. SIMS. I think we might as well be candid. It is collective in substance and fact, is it not?

Mr. LOVETT. Undoubtedly. We feel, Judge Sims, that probably for the first time most of the railroads of the country are entirely in accord in proposing or presenting and suggesting some method of dealing with the railroad question. In the past the railroads were too much given to contenting themselves with denouncing the legislators and Congressmen and criticizing and condemning legislation without proposing anything. We felt that not merely as a committee, but as men experienced in the railroad business, it was our duty to submit what we thought ought to be done toward the settlement of the railroad problem. Whether it is politically practical or not, or however much it may prejudice the cause to have suggestions emanate from that source, we resolved to give our deliberate judgment as to what is best for the country and the railroads.

Mr. SIMS. I do not see why concerted action on your part should prejudice the matter.

Mr. LOVETT. Mr. Thom stated fully to the committee at the outset the sentiment of this advisory committee and was expressing the composite views of this committee, and the remedies he suggested were the suggestions of this advisory committee, and in my statement, if you have observed it, I have generally said "we" in speaking of what we thought ought to be done. But I am expressing my individual views.

Mr. ADAMSON. If Judge Sims is through, before I turn the matter over to Senator Cummins I wish to state that while I appreciate the wisdom of your suggestion for unification in regulation it appeals to me that this is a matter which affects the railroads and the public more than would a purely executive or administrative matter, and my views are that when you come here suggesting legislation of this character, legislation of such a fundamental character that the executives are going rather far without consulting their boards of

directors and stockholders. This strikes me as being really a proposition that goes beyond the administration of your railroads.

Mr. LOVETT. That may be; but I do not think a man loses his right to express his views—

Mr. ADAMSON. I am talking to you now, Judge Lovett, as a witness.

Mr. LOVETT. And I am answering you as a witness.

Mr. HAMILTON. In that connection you appear here, then, with the knowledge and consent of the committee and with the full understanding of the committee that you are expressing the general views and understanding on your part that you are expressing the general views of the committee. Is that true?

Mr. LOVETT. I was invited by the joint committee to appear here.

Mr. HAMILTON. I think that ought to go into the record.

Mr. THOM. And you were invited also by the advisory committee?

Mr. HAMILTON. I think that is an important element.

Mr. LOVETT. I should not say I was invited by the advisory committee. I am a member of the advisory committee.

Mr. HAMILTON. The importance of your testimony is increased somewhat by the fact that you represent and express the opinion of these experts?

Mr. ESCH. Mr. Thom, in opening these hearings, used this language:

We shall be ready to appear at the order of the joint committee and to meet its convenience, but would like to have the opportunity of presenting our views in the light of what may be developed by those gentlemen who appear, as I understand it, in the public interest, and not as the representatives of any particular body.

Mr. ADAMSON. Judge Lovett is here as a witness, subpoenaed by the committee, and we are glad to have him here, and we are glad to have heard him. My object was for the purpose of discovering whether he had obtained any vote giving him any authority to speak—from the board of directors or his stockholders.

Mr. LOVETT. I am willing to give the committee my full pedigree if desired, but I shall have to ask the committee to set its own value on what I have said.

Mr. THOM. I think it may be stated here—I think Mr. Lovett has overlooked it—that Mr. Lovett and several others were invited not only by this committee but by the advisory committee of railway executives to appear to discuss the railroads' views.

Mr. SIMS. And you do not think he is misrepresenting them, either, do you?

Mr. THOM. No.

Mr. ADAMSON. I do not think there has been any attempt to impeach the regularity of the committee of executives by this committee, but my purpose was to show that he had no authority from the boards of directors or stockholders to ask for this revolutionary change in railroad matters.

Mr. LOVETT. I have such decided views that if I had not been afforded an opportunity to appear here I should have asked for it.

Mr. ADAMSON. Senator Cummins, it is your turn.

Senator CUMMINS. Judge Lovett, I did not hear your direct statement, unfortunately, and I do not intend to interrogate you about either the Federal incorporation of railroads or the reorganization

of the commission. There is one phase of the subject of regulation that has always perplexed me above all others, and I think it is fundamental; and I think, with your permission, I shall ask your view on that subject, if you are willing to give it.

Mr. LOVETT. I shall be very glad, Senator, to answer any questions I can.

Senator CUMMINS. I assume that the most important thing, after all, to be accomplished in regulation of common carriers is that the charge for the service rendered to the people shall be reasonable.

Mr. LOVETT. And the facilities adequate.

Senator CUMMINS. I was about to come to that.

Mr. LOVETT. I beg your pardon.

Mr. ADAMSON. Senator Cummins, consider yourself in the chair, please.

Senator CUMMINS. Disregarding all the technicalities of definitions—I do not want to get lost in any maze of niceties—the charge, to be reasonable, must be sufficient to bear all the cost of operation and maintenance and make such return on the value of the property rendering the service, or the capital invested, as will be adequate, and that will attract further investment as additional facilities are required? Have I stated that proposition with reasonable accuracy?

Mr. LOVETT. I think so.

Senator CUMMINS. You recognize, I assume, that there are strong roads and weak roads?

Mr. LOVETT. Undoubtedly.

Senator CUMMINS. It is also a matter of common knowledge that these roads must all render their service substantially at the same rates—

Mr. LOVETT. They do.

Senator CUMMINS. For they are nearly all competitive in some form or in some way with each other.

Mr. LOVETT. That is true.

Senator CUMMINS. Now, I will not ask you to affirm my hypothesis or basis—and I use it largely for illustration—but suppose at any given time the roads carrying 80 per cent of the traffic have sufficient revenue under existing rates to accomplish all these purposes—that is, pay the cost of maintenance and operation, accumulate whatever surplus may be required, return to the owners of the property adequate rewards—and that the roads carrying 20 per cent of the traffic need, we will say, \$50,000,000 more than they are receiving. The question that is uppermost always in my mind is how to give to these weak roads that need \$50,000,000 more without giving to the roads that do not need any more \$200,000,000. I would like your answer to that question.

Mr. LOVETT. I can not answer that, Senator. I do not know of any way in which it can be done.

Senator CUMMINS. You recognize, do you not, that that is the real, fundamental, unsolved problem in the regulation of railroads in private ownership?

Mr. LOVETT. It can not be done in the way in which you propose in any way that I know of; but if you remove one restriction you put on it can be done.

Senator CUMMINS. Under the present system it is utterly impossible to do it, is it not?

Mr. LOVETT. Under the present system?

Senator CUMMINS. Yes.

Mr. LOVETT. No; it is not.

Senator CUMMINS. I am not now speaking of comparing the system of private ownership with the system of Government ownership, but I am speaking of the present distribution of private ownership and the present grouping of railroads.

Mr. LOVETT. I can not answer your question, Senator, without making rather a full statement.

Senator CUMMINS. There is nothing that would help me more in reaching a conclusion as to what should be done than to have some one with your experience and study devote a few minutes to that subject.

Mr. LOVETT. Well, the impossible factor in the problem which you present is the statement that the proposition is, or what is desired is, to give these roads that constitute 20 per cent of the mileage the revenue——

Senator CUMMINS. I am not speaking of 20 per cent of the mileage, mark you, but 20 per cent of the business—the roads that do 20 per cent of the business.

Mr. LOVETT. The revenue they need without giving the other roads that do not need the revenue. That can not be done in any way I know of. I think you are assuming a status with respect to the returns on railroad capital that has never been adopted by this country as a whole or sustained by the Supreme Court. You are assuming that the earnings from a railroad company must absolutely be limited to a certain basis or a certain per cent. I do not understand that that is an accepted theory in our railroad regulation. I understand the doctrine of the Supreme Court to be that the railroads are entitled to a return upon the value of their property, and in determining that value you are not to consider the cost of reproduction, merely, but all the elements that enter into the value of the railroad.

For that reason I do not understand that we have come to the point of limiting a return to any certain per cent on the stock or bonds or on the cost, or on the cost of reproducing, and that there is absolutely no fixed return upon a railroad. I think the only basis is the return on its value, and that all these elements which have been enumerated by the Supreme Court and many others must be taken into account in determining their value.

Now, applying my view to your problem: If the railroad companies that are carrying 80 per cent of the traffic of the country are so situated, even though they are earning a large return upon their property, that without unreasonable charges, without extortion, not with reference merely to their return, but without unreasonable charges and at reasonable rates, the rates are so adjusted that, even though they earn more than these other roads can earn, I see no reason why they should not be allowed the earnings if the traffic can stand it without prejudice or injury. But there are some roads, and always will be roads, that carry a portion of the traffic that can not under any system of rates devised earn enough money to provide the facilities they ought to furnish. Those roads are simply insolvent.

It was a mistake to build them, and the owners will have to lose their money.

If the policy of the Government is to go further and say that every railroad must, without reference to its earning capacity, provide certain facilities for communities that are not provided with railroad facilities, and the opportunity to make money is not sufficient to justify the investment of capital, then Congress will have to make some special provision or the Government will have to provide the facilities itself.

Senator CUMMINS. You have observed, of course, that in my question I used the words, "the value of the property." I am not attempting to settle here the rule which shall be applied to railway property in determining its value, nor am I attempting to determine what return on the value of the property would be fair and reasonable. I am assuming that 80 per cent of the roads are earning enough now and that 20 per cent are not, and that they will have to have \$50,000,000 more each year in order to keep them alive; and they must be kept alive, because the territory which they serve can not be abandoned, and we shall have to find some way in which these weak roads can be not only preserved but improved.

Mr. LOVETT. I do not know any way, in that case, except Government aid.

Senator CUMMINS. That is, it is apparent that it would be vastly more economical, if you please, to make an appropriation of \$50,000,000 and distribute it among these railroads, than it would be to give the very large proportion of the railroads \$200,000,000, which I am assuming they do not need.

Mr. ADAMSON. Does not the commission now permit certain railroads to charge different passenger fares, owing to circumstances and conditions?

Senator CUMMINS. Oh, certainly; there is nothing that prevents different rates being put in on different roads. The Baltimore & Ohio could be authorized to charge more than the Pennsylvania Central, but it could not do it and get the business.

Mr. LOVETT. The field in which such a privilege can be availed of is very narrow.

Mr. ADAMSON. Yes; and I take it, as applied to the great bulk of the carrying business, the rates must be the same as between competing roads?

Mr. LOVETT. Yes; that is perfectly true.

Senator CUMMINS. Now, I have a suggestion, for I do not believe that the Government would be willing to make an annual appropriation to the railroads which can not under natural conditions sustain themselves. But is there not a way by which the railroads of this country could be grouped and consolidated that would distribute this burden so that the public would not be compelled to pay more than the required amount and the investors in railroads would not suffer? In other words, could you not take the railroad system of this country, considering it as a whole, and so group it that the strong railroad would be coupled up with the weaker ones, and whatever advance in rates were required, if any are required, would be sufficient only to make good the shortage which I am assuming now exists?

Mr. LOVETT. Personally I do not see, Senator, how that could be done short of Government ownership. A road that is so situated that it can make 25 per cent profit under rates that would cause a competing line to starve ought not to be required to give up its position and bear the burden of the unwisely constructed line. The stockholders in the successful line ought not to be required to take the burden of their unfortunate competitor. So I do not know any way that could be accomplished except by the Government.

Senator CUMMINS. Let us see about that. You have stated a great many times, and it is absolutely true, that there is no limit to the power which the Government has over the railroads in regulating them and in furnishing the service. Now, what prevents the Government from requiring a consolidation that would, even if it did, reduce the return upon some of the railroads that are now earning more than a fair, reasonable rate upon the value of their property?

Mr. LOVETT. Because that would be confiscation. Let me state again, Senator, coming back to the problem involved in my general statement in answer to your first question. If a railroad extending from Washington to New York were so situated that under reasonable rates, rates that will permit the traffic to move freely, it can earn 25 per cent while its competitor can not earn enough to live on, that road is worth the 25 per cent, it should be capitalized at 25 per cent in determining its value. That I understand to be the doctrine of the Supreme Court in *Smythe v. Ames*. We must not, I take it, at least until the Supreme Court changes its decisions, get fixed in our minds the idea that because a railroad did not cost a certain amount or could be reproduced for a certain amount theoretically, you are entitled to take that as its value—those are only circumstances. In determining the value of that road you must consider its location and its earnings. If you deprive it of the advantage of its position and of its good will and put it on a parity with a poor road by the side of it, you will be confiscating the property.

Senator CUMMINS. I realize that we are possibly getting into a doubtful zone in the law, but I submit that you are arguing in a circle. You can not fix the value of a property by capitalizing its net earnings when the public has the right to regulate the earnings. You must ascertain the value of the property in some other way than by merely capitalizing what it is then earning, otherwise the authority to regulate the charges would be of no consequence. The very thing you are trying to do, as I understand it, is to fix the earnings at a reasonable point.

Mr. HAMILTON. May I ask a question of you, Senator, so as to get the scope of your inquiry?

Senator CUMMINS. Yes.

Mr. HAMILTON. Is it your idea that by consolidation the stronger railroads should be directed to purchase the weaker railroad?

Senator CUMMINS. That is the general idea, although I do not give it—I am simply groping around to see if there is not some way by which we can reach this point, because I say frankly if we can not reach that point and protect it in some form of regulation, Government ownership is just as certain as the time is to go on.

Mr. ADAMSON. Senator, I wish you or the witness, either one, would tell me whether or not the authority of the commission to apportion through joint rates over through routes has even been used

to accomplish the very thing you suggest, to make the strong road help the weak one?

Senator CUMMINS. I have no doubt it has, although I have not examined it.

Mr. ADAMSON. Is that not one way to do it?

Senator CUMMINS. Yes; I think that is just what must be done. It must be true, Judge Lovett, that if the Government finds a railroad so situated, we will assume that it is earning 25 per cent a year upon any value of property that might be accepted, that the Government can reduce the rates on that railroad without confiscation?

Mr. LOVETT. Yes; I agree with that.

Senator CUMMINS. Well, if it can do that directly, why can it not do it indirectly by compelling such consolidations or organizations as will have that effect?

Mr. LOVETT. I do not think the Government can indirectly confiscate property. Take the road earning 25 per cent; it is doing it in competition with other lines. Now, the power of the Government is to fix "reasonable" rates, and a reasonable rate has a very wide range, as I indicated yesterday. Certainly in case of a road earning 25 per cent the Government could reduce its rates. But if it reduces that road's rates in competitive territory and keeps them up on the other lines it will increase the road's revenue. The Government, by the exercise of that power, can not accomplish its object. Its power is to reduce the rate, not to confiscate.

Senator CUMMINS. Of course it goes without saying that, employing those terms, the Government can not confiscate anything.

Mr. LOVETT. No.

Senator CUMMINS. But that is possibly begging the question, because the inquiry is, Does it confiscate the property of the railway company to bring about this result? I do not intend to pursue it, but to me—I simply suggest it to those who represent the railroads here—it is infinitely of more consequence than the question of Federal incorporation, because that is a detail in a sense, although a very important detail, and the work of the commission likewise. I hope that those who have gone into the question with care and given it great reflection will before we have finished try to find some solution of that problem, which I regard as the vital thing in Government regulation as distinguished from Government ownership.

Mr. LOVETT. In case a railroad is so unfortunately situated that it can not pay its way under rates that are reasonable for other lines with which it is competing the great question of public policy arises whether Congress, in order to let it live, will allow other roads to earn more than absolutely necessary to give them a fair return. If Congress does not want to do that, then the road is a failure, and we shall have to bear the consequences.

Senator CUMMINS. Of course that is the very question. One could easily mention a dozen of the roads, or more, which supply the needs of a great body of people and of a large territory. Now, those roads must live, and they must be reasonably efficient.

Mr. ADAMSON. If the Scriptures applied to railroads, your problem would be solved, because the Scriptures say, "Bear ye one another's burdens."

Senator CUMMINS. We have got to do something to sustain them. If we have to sustain them by giving them rates which will make the

capital invested in them reasonably remunerative, which at the same time will allow 80 per cent of the business of the country rates which are excessive, as determined by the returns, we are confronted with a pretty serious proposition, and I believe that is the exact situation. Of course many of you will not agree with me, but I think that the proof before this committee will show before we have finished that 80 per cent of the carrying business of this country is now being done with fair remuneration.

Mr. LOVETT. But there is no hope—

Senator CUMMINS. And that 20 per cent of the business is being done for a compensation that is driving the roads into bankruptcy and will keep them there.

Senator TOWNSEND. I should like to make just one other suggestion. You have appealed to the witnesses to come on to discuss that question. There is a corollary of that which occurs to me. If it is proposed that these bankrupt roads shall be carried by the successful ones, what are we going to do about permitting the organization of any more roads that may be in that same situation?

Senator CUMMINS. That is a very important inquiry. I am not prepared to assert it as a well-settled opinion, but I have a hope that the railroads of this country can be grouped and, considering each system as a unit, can be given rates that will make the entire property remunerative, but will not require an addition to the rates greater than we will be compelled to contribute from the National Treasury if we are trying to sustain the weak roads individually; and if that were done, then all the unoccupied territory that fairly requires railway service would be filled, because capital would be attracted sufficiently to warrant the operation of the roads.

Mr. HAMILTON. In other words, if you treat the systems as a unit, there would be certain parts of that system actually running at a loss, but you would make the rates applying to the system so that on the whole the system would be receiving sufficient compensation.

Senator CUMMINS. Just as it is now. I have no doubt that, properly considered, there are a great many branches of the large systems that are utterly unremunerative..

Mr. LOVETT. There is no doubt of that.

Senator CUMMINS. If they were looked at independently, but as part of the system, they receive the benefit of the larger earnings of the main trunk lines.

Mr. LOVETT. There is a way, Senator, but I have not mentioned it because I might be suspected if speaking in a facetious manner, which I do not mean. Of course, if the antitrust law were repealed and all restrictions upon making of rates was removed, roads such as you have described would develop a "nuisance value" that would tempt the strong roads to buy them. But so far as, by any lawful manner, requiring the other roads to take over the unprofitable lines, forcing the other roads to take them over, I do not see how it can constitutionally be done.

Senator CUMMINS. Of course, whatever was done would have to be done under the direction of some tribunal—the Interstate Commerce Commission or some other function of the Government.

Mr. LOVETT. Yes.

Mr. ADAMSON. Would not somebody call that pooling?

Senator CUMMINS. To me it does not make any difference whether they call it a pool or what they call it. I know there is a great deal of prejudice against consolidation, but that does not terrify me in the least.

Mr. LOVETT. I do not see any escape from the fact that if a railroad is so situated it can not live at rates that its rivals make, it is a bad investment, and the people who put their money into it will lose. The poorer it is the poorer the facilities and the poorer the transportation provided. Now, if public policy requires that road to be kept up to a standard with the others, the Government should bear the burden. I do not see how you can require the stockholders of the fortunate road rather than the Government or the people at large to assume the burden any more than you can require any other group of citizens to bear it.

Mr. SIMS. That would destroy private ownership completely?

Mr. LOVETT. Yes.

Senator CUMMINS. It does not seem to me it would go that far.

Mr. SIMS. I mean inducement to private ownership.

Senator CUMMINS. I can not easily imagine, assuming we have Federal incorporation, to which I have not given my assent entirely—supposing we have Federal incorporation. Here are certain gentlemen who incorporate themselves under the Federal law and they proceed to condemn certain railroads pointed out by the Interstate Commerce Commission, and they condemn those railroads and combine their ownership into one corporation, and I do not think there could be any question of confiscation arise.

Mr. LOVETT. But they would have to pay the value.

Senator CUMMINS. Oh, the value; but the value would not be determined by what the roads happened to be earning at that moment, in my judgment.

Mr. LOVETT. If I may be permitted to answer your suggestion that I am reasoning in a circle about this question, I should like to say that I understand the Supreme Court has said that in determining the value of a railroad you take the supposed cost—that is, the original cost, betterments, and additions since; the supposed cost of reproduction, the amount of the stock and bonds, the market value of such stock and bonds, the supposed earning capacity of the road under Government rates, and every other circumstance and condition that bears on value. I realize that when the Government has the power to fix the rates you can go round the circle and reduce rates, but those are the elements the Supreme Court said must be taken into account.

Senator CUMMINS. Judge Lovett, you will remember the decision in which those agreements were stated was rendered a great many years ago.

Mr. LOVETT. I do not know of any decisions inconsistent with it since.

Senator CUMMINS. And the subject is still in its formative stage probably?

Mr. LOVETT. Undoubtedly it is.

Senator CUMMINS. I beg pardon for this dissertation rather than examination, but I wanted Judge Lovett's mind directed to that subject, and I wanted his opinion upon the thing which seems to me more important than all others in trying to ascertain whether our present system of regulation is a success or a failure.

Mr. ADAMSON. The Chair will rule Senator Cummins's apology is unnecessary; that information from members of the committee may be just as valuable to the committee as information from a witness.

Mr. THOM. In connection with the further consideration of your suggestion, Senator Cummins, I should like to ask you at your leisure to read the case of the Monongahela in 140 U. S.

Senator CUMMINS. The case on which the locks and dams on the Monongahela River were condemned?

Mr. THOM. Yes; do that.

Senator CUMMINS. I am quite familiar with that decision.

Mr. ADAMSON. Before you dismiss the subject of your interrogation I want to call your attention to the existing law of recent enactment authorizing the commission to fix the rate at which mails shall be carried, and ask you if that would be considerable enough to contribute to the solution of the question you ask?

Senator CUMMINS. I think that legislation is founded on a fault, in my mind.

Mr. ADAMSON. If the Post Office Department pay to those weak railroads the prices for carrying the mails they originally paid to the star routes in those communities they would all be solvent?

Senator CUMMINS. I think so. That is all, Mr. Chairman.

Mr. ADAMSON. Before passing to Judge Sims, I forgot to refer to a subject which I think is of some importance, and I hope Mr. Esch, when he reaches you on examination, will take it up, as he is interested in it—that is the question of shortage of freight cars. No matter how far the legislation recommended by this committee may go, we certainly shall have to legislate about that unless the situation changes very materially. I wish you would tell us what the trouble is, the fundamental trouble, about the shortage of freight cars at different points.

Mr. LOVETT. I will give you my idea about it, Mr. Chairman. I am not an expert operating man, but I will give you my opinion merely as a supervising executive.

I believe the trouble with the freight-car situation is, first, the European war. That has dislocated all business, and certainly all transportation problems. The destruction of shipping as a result of the war and diversion to unusual lines of traffic is, I should say, primarily responsible for the freight-car situation. The enormous increase in our export business as the result of the European war, and this occurring simultaneously with an extraordinary reduction in ocean transportation from our ports, has resulted in a great congestion of cars at ports loaded with export business.

Mr. ADAMSON. Because they have to stand on the tracks unloaded, owing to the lack of ocean transportation?

Mr. LOVETT. They have to stand on the tracks unloaded. I put down first, and generally the European war, and the destruction and diversion of shipping to other than the ordinary lines of transportation. In connection with the increase in our export business the unparalleled increase in our manufacturing business calls for greatly increased quantities of raw material, and especially coal, for fuel, which employs a great many cars. Then the movement of the manufactured products to ports. Next the system by which long free time is allowed for loaded cars without demurrage. The free time allowed at the ports before charges accrue is very great. I do not remember

what it is—some of these gentlemen who are closer to the subject than I am can tell you better, but probably 20 to 25 days in some places. Then the free time at other places allowed consignees for unloading cars, and the abuse of that privilege by shippers. What does a man who orders a carload of automobiles, for example, care for a dollar a day or a \$5 a day demurrage on a car of automobiles? He can use the car for storage.

Another matter abused is the right of diversion in transit accorded to shippers of a great many products. There ought to be a change in the car service rules and the penalties. Reasonable time should be allowed for unloading to the man who wants to unload, but there should be some way of reaching with charges that would stop the practice of men who use cars not merely for the purpose of transportation, but for storage purposes. Next, especially in the West, is the change of lines of usual routes of traffic. Formerly the traffic between the Pacific and Atlantic coasts passed, in a constantly increasing degree, south and across the Tehuantepec line and the Panama Railroad. More particularly was the increase over the Tehuantepec route by the American-Hawaiian line of steamers. Then on the opening of the canal it started through the canal in a greatly increased volume. The canal was closed by slides in the early days of the war and the ships engaged in transporting this coastwise traffic between the Pacific coast and the Atlantic coast, as well as the ships that were before the war engaged in carrying European traffic from the Pacific coast through the canal or around Cape Horn, retired from that business. Even since the reopening of the canal there are very few ships carrying the business. The American-Hawaiian line, and many other ships that were engaged in that traffic, have been leased and have engaged in the traffic connected with the war.

Most all of the grain on the Pacific coast that was formerly exported went out through the Pacific ports. I am told there is no record of a carload of grain moving from Oregon or Washington over the Union Pacific to the Atlantic seaboard prior to the autumn of 1915. All that grain was exported formerly through the ports of Puget Sound or through Portland or the California ports. I do not know just how many thousands of carloads of grain were turned eastward late in 1915 because there were no ships to carry it out through the Pacific ports. It was carried overland. We have hauled many thousands of cars of grain since the summer of 1915 eastward; and other lines have done the same.

These cars would get in the East and be caught in the jam; and the activity in the East was so great that they were needed there and were kept there even when they were unloaded. The penalty for using a car was 45 cents a day, I believe.

Mr. ESCH. That has been increased. It was first 25, then 45, and now it is 75 cents.

Mr. LOVETT. Now, what do railroads care for 25 cents or 45 cents or 75 cents or \$5 a day for a good box car, when shippers are frantic for cars, and when the car can be loaded and handled in most profitable business? The result is that all the car service rules as between railroad companies broke down. They were practically ignored.

Take our own situation: Our cars have been in the East and we have never gotten them back. I guess we held onto all we could, but our situation was that a great deal of the business, 56 per cent of our

freight traffic revenue, is from traffic that originates on our lines, grain, potatoes, and various foodstuffs, and much of it goes off our lines. When cars left our lines loaded with these products we practically bade them farewell, at least as long as the congestion lasts.

The car movement on our line—and most of the Western lines—is eastward. The westbound movement is very much smaller than the eastbound movement.

MR. ADAMSON. That is more so during the period you have described?

Judge LOVETT. Yes; and in consequence more cars were moving off the line than coming on. Now, as to the responsibility that rests on the railroads for any part of this condition, I do not know the opinion of railroad men generally, but I do not believe myself that there is a material car shortage in this country, aside from the extraordinary conditions of the European war. I believe if there had been the usual amount, relatively, of ocean shipping, and if there had not been such a frightful detention of cars for storage purposes, the railroads with the equipment they have could handle the enormous increase in products and manufactures of this country without any very serious inconvenience.

MR. ADAMSON. If properly distributed and promptly unloaded, there would have been enough cars?

MR. LOVETT. Not with the ocean facilities——

MR. ADAMSON. If they could have been promptly unloaded, I mean.

MR. LOVETT. There would have been some shortage, but I do not believe it would have been serious.

MR. ADAMSON. Is there anything in the charge that some railroads which own lots of cars use the facilities with which they can offer them to compete for business and refuse them except under conditions favorable to themselves?

MR. LOVETT. I do not believe I caught that question. Read the question.

(The stenographer repeated the question.)

MR. LOVETT. I do not know. I do not believe there is. On the Union Pacific we were very short of cars and we also had a very great increase of business from the movement of this unusual traffic and we had the worst winter in our history. Our cars were held in the East where they went loaded with food products. We have been unable to get them back, and have been very short. There was congestion on our line, and we had to put on an embargo for a few days. In times of extreme shortage we asked our customers at competitive points, where there were other lines, some of them more fortunate than we were in cars, to give their business to rival lines so that we would handle the business at local stations where the shippers had no other line to serve them.

Our competitors in the Northwest had rather a short wheat crop last year in Minnesota and the Dakotas, and they did not have the same difficulties in that locality in respect to cars that they ordinarily have. Consequently they had more cars for Oregon and Washington than we had. I have described our practice, and I have understood that to be also the practice of other companies when unable to furnish cars. I do not believe any railroad company was struggling for business when it did not have the facilities for

handling it; and I should say, generally, without knowing what every railroad company has done, that the charge to which you have referred is not true. Railroads have not preferred competitive rather than local business.

Mr. ADAMSON. You mention the fact that the movement on your road is eastward more than westward. Is it not generally true that on the other systems it moves one way rather than in both directions?

Mr. LOVETT. I think so. I have not studied that, however.

Mr. ADAMSON. That would result in hauling empty cars one way?

Mr. LOVETT. Yes.

Mr. ADAMSON. And that very greatly embarrasses the efficiency of freight cars?

Mr. LOVETT. Yes.

Mr. ADAMSON. Have you considered any system or method by which that could be in any large measure avoided?

Mr. LOVETT. No; I have not. I do not know how it could be.

Mr. ADAMSON. Have you ever considered the subject as analogous to the Pullman Co. in mobilizing the cars in some way and letting the railroads have them as they needed them?

Mr. LOVETT. I have heard various suggestions about pooling the cars, etc., but I should say the Pullman Co. has to deadhead some cars sometimes—not as many as we do. But if the freight from a certain territory moves in one direction to the market, and with a much greater export than import business. I do not know of any way to balance that trade, except in the manner they do with the international trade—that is, ship back gold and securities——

Mr. ADAMSON. We had a subcommittee to consider the question of private cars some three years ago, and it got on my nerves somewhat, generally, because I think I was a wagoner in the early days and learned what it meant to have to move empty one way, and learned how unprosperous it was.

Judge Sims, you may have the witness.

Mr. SIMS. Judge Lovett, I hope you will bear with me in the questions I am going to ask, although they may appear crude and elemental?

Mr. LOVETT. I hope the answers will be as intelligent as the questions.

Mr. SIMS. Of course. I know from your reputation throughout this country that what you say on this subject will receive great weight—and it ought to—and that what you will say will be studied. Therefore I feel it important to ask you, perhaps, many questions that I would not ask some man who does not enjoy that prestige, and I hope you will not consider me unnecessarily tedious.

Mr. LOVETT. Judge, you embarrass me to such an extent that I am afraid my answers will not be——

Mr. SIMS. Oh, not at all. I think not. My first question is, If this movement to bring about this legislation which you favor and which Mr. Thom favors and which the Committee of Railroad Executives favor is not, in fact and effect, a political movement?

Mr. LOVETT. A political movement?

Mr. SIMS. I do not mean a party movement, but a political movement.

Mr. LOVETT. I wonder what you mean by "political"?

Mr. SIMS. An effort to secure legislation through public sentiment or by affecting public sentiment, as well as by directly appearing before the committees of Congress?

Mr. LOVETT. I think this is a fair answer to that question, Judge Sims: I believe that if the public were fully informed and understood the exact railroad conditions public opinion would force legislation along the lines that we have advocated. I believe the greatest blessing that could come to the railroads of this country would be for the people—all the people—to know the exact railroad conditions.

Mr. SIMS. To know the exact facts?

Mr. LOVETT. Yes.

Mr. SIMS. And this movement, at least in part, is caused by a desire by those interested in railroads—ownership and operation—that the people should know the reasons they have for the positions they maintain and the legislation they seek.

Mr. LOVETT. I do not know just what you mean by "movement" there.

Mr. SIMS. I mean that the movement is by concerted action to obtain legislation by the railroads—by these 60 systems.

Mr. LOVETT. As I understand the object—and certainly my object is to do everything I can legitimately to secure legislation along the lines I have indicated. I believe that it will come. It may not come now, but I believe it is so necessary that it will come in time. I recognize that Congressmen are representatives of the people and that they can not be and are not indifferent to the views of the people on any fairly debatable question—and my object now is to secure this legislation. I believe, as I said a moment ago, that if the people knew the conditions that this legislation would come. If as a result of this examination the people are better informed as to the real conditions, I think that will help the cause of legislation.

Mr. SIMS. My question was not simply intended to cover the services of the joint committee of the two Houses, but the general movement that preceded the organization of the committee that helped to bring it about.

Mr. LOVETT. "General movement"; let me see just what that can refer to.

Mr. SIMS. Just what you mentioned, to effect public sentiment and to get the benefit of public sentiment that may be developed by giving the information which you have to the public.

Mr. LOVETT. To go back a moment to the beginning of what you term "this movement." We all felt the necessity of legislation dealing with this question in a broad way. Most of us had believed that a good way to defeat a measure was for the railroads to advocate it, because there are a great many people who, justly or not, suspect any legislation that the railroad executives advocate. We felt, while we realized the importance of this legislation, that probably we would hurt the cause more by advocating it than otherwise; but we concluded, after a discussion of the subject, that it was our plain duty to present what we believed was a constructive plan of legislation, regardless of the consequences. Because we are convinced that the responsibility for the future development of the railroads of this country will fall on Congress rather than on us, we felt it was our duty to present to Congress honestly what we think the situation requires.

Mr. SIMS. But to present it also to the country in connection with presenting it to Congress?

Mr. LOVETT. Well, I would like to see it presented in every newspaper and every household in the United States.

Mr. SIMS. And with that wish in view you are doing all you can to bring that about?

Mr. LOVETT. We are not doing very much about that. The summaries of the proceedings or the statements here are prepared and sent out, as I understand, to the newspapers—to those newspapers that want them—but they are exceedingly brief.

Mr. SIMS. But there are a number of organizations seeking to advance these same views, are there not?

Mr. LOVETT. I do not know of any organization except this advisory committee, and I am sure that the gentlemen who are handling this matter would be very glad to file with the committee, if the committee so desires, whatever summaries they send out.

Mr. SIMS. Let me read a statement, Mr. Lovett. I am holding here in my hand a speech or address delivered by Mr. John Muir, chairman of the Railway Investors' League. This address was delivered on December 14, 1916, at Evansville, Ind.

Mr. HAMILTON. Delivered where?

Mr. SIMS. At Evansville, Ind. This pamphlet, which is being sent out, contains a copy of that speech. It says this in the beginning, and I suppose—well, I will read it:

For the first time in the history of railroading a program bringing together all the complex elements which go to make up the railroad situation was arranged under the auspices of the Evansville (Ind.) Chamber of Commerce, to take place in that city on December 14 and 15. Railroad presidents, leaders of railway labor unions, members of commissions which regulate the railroads, counsels for railroads, shippers, and representatives of the great army of investors in railroad stocks and bonds were present.

Among those on the program to make formal addresses were Alfred P. Thom, counsel of the railway executives' advisory committee on Federal legislation; Mr. Frank Trumbull, chairman of the railroad executives' advisory committee; Frank P. Walsh, chairman of the Federal Commission on Industrial Relations; Clifford Thorne, chairman of the Board of Railway Commissioners of Iowa; W. G. Lee, president of the Brotherhood of Railway Trainmen.

Those were some of the gentlemen present.

Mr. Muir in his address says, on page 3, referring to—well, I will read a little ahead, so that you will know what he referred to:

The investors, 600,000 strong, the real owners of the properties, scattered all over this country, having an immense power vested in them, unorganized, are unable to come forward with the combined voice of even a paltry dozen. They are uneasy. They chafe. They hesitate. They ask the question, How about future investments in railroads torn by dissention between executives and employees?

They finally evolve this thought: The executives of the road represent us, and, in the main, do it satisfactorily; but owing to the fact that there is a prejudice against them in Congress, in the commissions, and in the mind of the public, they can't in their official capacity exert as much influence in certain fields as we could if we should act for ourselves independently. Let us get together, and let us, the owners of the roads, show to Congress and the commissions that political influence and voting power are not wholly confined to shippers and the four brotherhoods.

That is Mr. Muir, who is the chairman of this Railway Investors' League. He is speaking as the chairman of an organization to let

the country know that the railroads and their owners have political influence and voting power.

Now, I am not criticizing that. I think that any person who has any property that may be affected adversely by legislation, either national or State or county or city, has a right to present the facts in relation to the property in which he is interested. But, as a matter of course, we Representatives here must represent what our constituents favor. If we do not, we will cease to represent them. So this political movement is started out for the purpose, not to affect this committee—this committee was already selected and was at work when this address was presented and when this organization was formed—but, to use a plain, common, everyday expression, to bring a back fire upon the Representatives, so that if there are those here now who do not voice the same sentiment and are not willing to legislate in that direction—in the direction which the members of this organization desire—they will be sure to replace them with those who will. They have a right to do that; but I think we ought to look at this movement as it really is, and which appears to be an attempt to educate the entire people of this country, with the advantage altogether on the side of the railroads, because they have the means and the opportunity and the experts with which to do it.

Now, being a nonexpert, and about as "non" as you can find, and representing a constituency which no doubt is reading a great deal of this back-fire literature, I am going to try to get all the information I can from you, because I believe you are a broad-minded and capable man, as Mr. Thom has shown himself to be in answering questions. But, as a fundamental basis to start with, there are two extreme positions which may be taken with reference to railroad property.

Mr. LOVETT. Will you permit me to interrupt you for a moment—

Mr. SIMS. Certainly.

Mr. LOVETT. To speak of Mr. Muir's statement?

Mr. SIMS. Certainly. I only wanted to read that to show the reason why I am asking the questions.

Mr. LOVETT. I want to enter a strong protest to being associated with anything Mr. Muir says. I do not know Mr. Muir. I understand he is a broker in New York, dealing in what are called "odd lots" of stock; that is, one share or two shares or a dozen shares, but usually small orders. Some of the large brokerage houses do not take orders for less than 100 shares. He has been trying, as I understand, for some time to organize the railroad investors' league, meaning, I suppose, the stockholders and bondholders. I am not criticizing his efforts, because I see no objection to such an organization; but it was presented to me, and there was some suggestion that Mr. Muir would like to communicate with our stockholders and circularize them, and it was suggested that for that purpose some one engaged in such a plan should have a list of our stockholders.

This was not Mr. Muir himself. Naturally I declined to furnish anybody a list of our stockholders. There was then a suggestion of sending out circulars to our stockholders, with some commendation from us of the movement. I declined to make any suggestion to

our stockholders commending any plan. I said that if Mr. Muir had something he wanted to send to our stockholders, without telling him who they were, and it was submitted to me and I saw no objection to it, I might send it. It was never submitted, and I never sent it. I get circulars, as I suppose all railroad executives do, now and then from Mr. Muir and others, about such movements, but I send them to the wastebasket, because I think such an organization should rest with the stockholders. I see no reason why it should not be formed, but I am having no part in forming it, in promoting it; it is a matter that rests entirely with our stockholders. I have declined even to commend it to them. So I do not want to be understood as having any connection with Mr. Muir or his organization, although in saying that I do not wish to criticize him. He can do whatever he pleases; he is a free citizen; but I am not responsible, and I am quite sure the advisory committee is not responsible, for Mr. Muir's effort.

Mr. SIMS. Mr. Lovett, I did not know anything about Mr. Muir and do not know yet—I mean, further than you have told me—that is the first information I have had. But this appears as an address before the Central States Conference on Rail and Water Transportation, and I read the names of the other gentlemen who were to deliver addresses, several of whom are connected with this investigation here and are men of very high character and high standing; and as this address was delivered by this gentleman there, and this Central States Conference on Rail and Water Transportation, I take it, had invited him, naturally I judged him by the company I found him in, and I supposed he was a man whose words were worthy of consideration.

Mr. LOVETT. I am entirely willing to agree that he was in proper company and that the company was fortunate in the association with him. As to the presence of these other gentlemen, I understood they made addresses there, and I hope they will continue to make them at every opportunity, because I believe it is a very wholesome public service to do everything they can legitimately to give information to the public on this subject.

Mr. SIMS. I only referred to that matter to show that it was an organized political movement; that is, a movement to affect public policies and secure legislation along these lines.

Mr. ADAMSON. The witness has the right to decline to recognize Mr. Muir as a coeducator.

Mr. THOM. Mr. Chairman, I think it is proper to state in that connection that as I understand that conference, all phases of opinion were invited to be represented on the subject. For example, Mr. Trumbull represented the executive's idea on this labor question; Mr. Lee, of the railroad brotherhoods, represented the labor side. They both made addresses.

Senator TOWNSEND. Do I understand, Mr. Sims, that you present that as showing even remotely that that was a railroad meeting, that they instigated that?

Mr. SIMS. No; the meeting was the Central States Conference on Rail and Water Transportation. That was what the meeting was.

Mr. HAMILTON. What is that? Is that something just gotten up on paper, or what is it?

Mr. LOVETT. One of the gentlemen who attended told me that when he was being introduced to make an address it was announced that the purpose was to "put Evansville on the map."

Mr. SIMS. There is no member on this committee from Indiana. I suppose you are safe.

Mr. THOM. In addition to that, I received this morning a full report of the proceedings there, and the first thing in it is an indorsement by President Wilson of that conference.

Mr. SIMS. Then it is not to be ignored in this hearing.

Mr. LOVETT. Not by you, Judge Sims.

Mr. ADAMSON. It was proposed as a benevolent effort to settle all these controversies and close the whole question. I was present when the purpose of it was stated to the President, and the President declined to attend. He thought there would be enough able men there without him, I think.

Mr. THOM. But let it be understood once for all that the railroads had nothing to do with the suggestion or getting up of that conference. They were merely invited to attend, as other people were.

Senator TOWNSEND. I think that the report that Mr. Sims has read shows that clearly.

Mr. SIMS. Certainly; it shows the facts. I say, I judged of him by the company he was in, as I did not know anything about him.

Now, Mr. Lovett, there are two extremes in this matter, as I understand. One is unregulated, uncontrolled private ownership of public utilities; that is one position which, of course, is not being maintained or sought to be maintained.

Mr. LOVETT. I do not understand that anybody advocates that.

Mr. SIMS. I mean, that is a position that has been held in the past by some railroads and some thinkers. The other is absolute Government ownership. Now, we are between these two extremes, having left one of them entirely, if we ever maintained it. Now, as I understand, the whole question involved in your testimony is one of regulation, not regulation as a new method, but the character of the regulation. We have regulation now—

Mr. LOVETT. I think you are complimentary to it, Judge, in calling it regulation.

Mr. SIMS. Well, an attempt at regulation. We certainly do not have Government ownership and we do not have unregulated private ownership. So we do have regulation—

Mr. LOVETT. Partial regulation.

Mr. SIMS. We have regulation to a certain extent; and your belief is that this method of regulation should be changed from what it is to the character of regulation which you have advocated?

Mr. LOVETT. That is, it should be completed.

Mr. SIMS. Yes; consequently I want to examine you along that line. And understand that not for one moment do I think that because a man owns stock in a railroad company he has no civil rights or political rights, and has not the same right to exert them that anybody else has. That never cuts any figure with me, and I think perhaps there is an unnecessary degree of modesty among men connected with railroads about this matter.

Mr. LOVETT. They are getting over that, Judge.

Mr. SIMS. I think they are. I hope they will.

Now, you start out, as I understand it, first with the claim that nationalizing regulation is a necessity?

Mr. LOVETT. That is my opinion.

Mr. SIMS. And you show that from 1906 to 1915, a period of 10 years, there was about \$600,000,000 per annum of new capital required during that period for railroad purposes?

Mr. LOVETT. For improvements, not counting the renewal or refunding of debts that matured during that period.

Mr. SIMS. I was just going to ask you what you mean by new capital. That will give you an opportunity to state what your view is.

Mr. LOVETT. I mean those expenditures which under the classification of the Interstate Commerce Commission are not charged to operating expenses.

Mr. SIMS. In other words, there had to be an addition to the permanent investment funds of the railroads to the extent of \$600,000,000 a year?

Mr. LOVETT. Yes; about.

Mr. SIMS. If the railroads could not earn, under existing regulation, this \$600,000,000 per annum, the only chance to get it was to borrow it?

Mr. LOVETT. Yes.

Mr. SIMS. And then you, from the best information you have, conclude that for the next 10 years, for the same purposes, it will require about \$1,000,000,000 per annum?

Mr. LOVETT. I did not state definitely any amount, Judge Sims.

Mr. SIMS. I said "about."

Mr. LOVETT. I expressed the opinion that for the same purposes, my judgment was it would be more than during the last 10 years, and that when there was added to these expenditures the amount necessary to refund debts that would mature during that period it would be nearly a billion dollars.

Mr. SIMS. In other words, there must be an additional investment by investors in railroad property for the next 10 years in order to enable the railroads to meet the requirements of the public?

Mr. LOVETT. Some of that money will come out of earnings.

Mr. SIMS. Well, you use the words "new money."

Mr. LOVETT. I include in "new money" that which according to the classification of accounts by the Interstate Commerce Commission is applicable to dividends; that instead of distributing it as dividends the company may put it back into the property.

Mr. SIMS. In other words, borrow it from the stockholders; is that the idea?

Mr. LOVETT. That is the idea.

Mr. SIMS. But it is an investment; it is a permanent improvement to the property—new capital?

Mr. LOVETT. In general it is new capital, because the stockholders have the right to take all of their earnings in excess of maintenance expenses as dividends if they want to. But instead of that, they will put some of it back into the property.

Mr. SIMS. But in putting it back into the property, as it is called, they are not incurring a loss?

Mr. LOVETT. Well, that depends. May I interject just here a thought on that?

Mr. SIMS. Certainly; I want information.

Mr. LOVETT. Under the English system—at least, as it formerly existed—the stockholders of the company would always distribute as dividends all the money each year applicable to dividends, and for the new capital required they would issue additional securities, stock or something else. But each English stockholder expects, or formerly expected, a dividend to the amount of the entire surplus earnings after meeting expenses. That has not been the American system. Any railroad that distributes what is reported by the Interstate Commerce Commission as net earnings—distributes all of it as dividends—will sooner or later come to grief. There used to be a theory in Wall Street—I have not heard so much of it recently, though it may still be one of the maxims of Wall Street—that one half of the surplus should go to the stockholders and the other half back into the property. That is, from the system of accounts that is kept, you could not afford to distribute the entire surplus applicable by law to dividends as dividends, but would have to put some back into the property to cover improvements that will neither increase earnings nor reduce expenses.

Mr. ESCH. Is that one reason—excuse me. Judge Sims—why the capitalization per mile of American roads is so much less than that of Great Britain?

Mr. LOVETT. I think so.

Mr. SIMS. My question, Judge, was this: If the amount of the net earnings which might be distributed in dividends among the stockholders was not all so distributed, but a portion of it was retained in the company's treasury and used for the permanent benefit of the properties, if there was any loss to the stockholders of that fund?

Mr. LOVETT. If the stockholders are allowed to earn on that, I answer, no. But the stockholder has this option. Take the Union Pacific; we earned for the fiscal year ended June 30, 1916, from the railroad and from our investments, about 16 per cent. We paid in that year a dividend of only 8 per cent. We had the right to distribute all of that as a dividend, and in that case the stockholder would have had the money in his pocket. But instead we put the surplus back into the property, or reserved it, and the stockholder equitably and fairly is entitled to a return on it, because we could have given him the money and issued new securities for improvements.

Mr. SIMS. Is not the property worth just that much more than it would have been if it had all been distributed in dividends?

Mr. LOVETT. We think it is.

Mr. SIMS. And the stockholder is the owner of the property?

Mr. LOVETT. Yes.

Mr. SIMS. So, unless a loss occurs afterwards, for some reason or other, it is not a loss. It is not a primary loss, to say the least of it, because the property is worth that much more, if that surplus is regarded as part of the property.

Mr. LOVETT. Theoretically that is true. I could express some views on the subject of accounting by which this large surplus is shown; but the accounting system is prescribed by the Interstate Commerce Commission, and it is a complicated subject and I do not care to go into a discussion of it.

Mr. SIMS. If a railroad company did not pay a cent of dividends in 10 years, but during that time might have done so, but put all its earnings into a permanent improvement of the property, has the stockholder lost 1 cent, if the property is benefited to the extent of the money used?

Mr. LOVETT. I should say he ought not to lose. Of course, it may have been a bad investment to put it back into the property; but theoretically he has not lost.

Mr. SIMS. Now, the question arises, as appeared in Mr. Thom's examination, which necessarily appears in yours, that the railroads in this country for the next 10 years will have to use a sum of money in permanent improvements exceeding their earnings, or exceeding such portion of their earnings as may be so used, possibly to the extent of \$1,000,000,000 per annum; and that the opportunity, and the only opportunity, to get that money is by sale of the bonds of the company, or part of the ownership in it, through stock certificates. That is an admitted position—not agreeing to the exact figures, but that is the position that both you and Judge Thom take?

Mr. LOVETT. Yes; I believe it will be necessary to expend upon this property the amount that I indicated in my direct statement, in order to develop the railroads. Some of that will be surplus earnings if we happen to have good times. Some of it will be borrowed on stock, and some in one way or another.

Mr. SIMS. You do not call money obtained from stock borrowed money, do you?

Mr. LOVETT. It is money put in by the stockholder. It is theoretical as to what it is. It is one way of getting money.

Mr. SIMS. He buys an interest in the property?

Mr. LOVETT. I will concede that technical distinction.

Mr. SIMS. And the property is under no obligations to make him any earnings, either in law or morals?

Mr. LOVETT. It is not?

Mr. SIMS. No.

Mr. LOVETT. I will not concede that.

Mr. SIMS. I mean compulsory obligation; because if I pay \$5,000 for a farm, there is no law, moral or divine, that I know of, that says I must have an earning out of that per annum.

Mr. LOVETT. I think, Judge Sims, that a man who puts a dollar into railroad property, to serve the public, is entitled to a return on it, whatever may be the form of the evidence he gets representing it, whether it is stock or bonds or what not.

Mr. SIMS. That brings up a very important question which I was going to ask you later on. Do you mean that he is entitled to an earning on that investment, regardless of the rights of the public to a proper service through that piece of property?

Mr. LOVETT. Well, that is rather a big question.

Mr. SIMS. I know it is. I was going to come to it later, but you have come right to it yourself, now.

Mr. LOVETT. I am ready to discuss it now, if you prefer, or any time.

Mr. SIMS. The railroad, or any other public utility, as I understand it, exists for the public, and that investment in these utilities by private individuals is not compulsory; it is a voluntary act, and

unless the State or Government should make some declaration or promise, establish some policy that would lead the citizen into making this private investment by which the Government would then be estopped from regulating it, in such a way as to produce an injury, he is simply taking a risk, as he would in making any other kind of private investment, knowing full well that it is a public utility; that its first obligation is to the public, and that if in performing its obligation to the public money is lost, even if the investment is lost, that he has no remedy, so far as compulsion through process of law or legislation is concerned?

Mr. LOVETT. I will state my view in answer to that.

Mr. SIMS. Between the public and the private investor, under such circumstances, if either must lose it must be the private individual?

Mr. LOVETT. Yes. I understand that an investor in a railroad takes the same chances that every other investor takes; that he is entitled to engage in the transportation business and to have reasonable rates for that service; that a reasonable rate involves a fair return on his investment as one of the very first elements in it, if he can get it; and that a reasonable rate and the return that he gets is not merely what some regulating body chooses to make. But let us take a railroad that is built in competitive territory; under my view of the right of the stockholder, he takes his chances in getting a return on his money from such rates as can be charged in fairness to the public, the shippers, and the travelers, and such as competitive conditions will allow; that a reasonable rate is a judicial question to be inquired into, and under the circumstances decided what it ought to be; and that there is no hard and fast rule by which you can fix a reasonable rate. It is not an arbitrary act. No commission has the right arbitrarily to deprive a man of return on his property. Before they can do that they must inquire into the circumstances and determine, considering the investment, what would be a reasonable charge. The fundamental consideration is that the owner is entitled to a reasonable rate, and there is absolutely no yardstick by which a reasonable rate can be measured.

Now, when this man with the dollar puts it into the railroad, he exercises his judgment about it, just as the man who invests in any other property. He takes into consideration all the circumstances: he takes into consideration the power of the Government to determine, *prima facie* at least, what is a reasonable rate. That is one of the difficulties that confront the railroads for the future—the things that this man considers when he puts in his dollar. He knows the things that you mention, and if he does not see any prospect of a reasonably certain return on his investment, he will not make it. But the man who puts his money into a railroad, according to my conception and my understanding, is entitled to just the same consideration for that dollar as the man who puts it into Ford automobile stock or United States Steel stock, or any other. You have no right to confiscate it.

Mr. SIMS. In other words, he has a right to all the benefits of private ownership, with all the benefits of sovereign power which is given the corporation in behalf of the public utility, to condemn private property and appropriate it?

Mr. LOVETT. Yes. He has the right to a return for a reasonable rate. Upon the man who puts his money into a private enterprise.

there is no restraint as to what he can charge. But to the extent of a reasonable rate railroad property is just as much entitled to protection as any other; and in determining a reasonable rate you must consider the investment or value.

Mr. SIMS. I do not think, really—at least perhaps I did not catch it—that I have had my question answered. My question was this: If a man invested in a railroad doing interstate-commerce business, which is under the power of Congress to regulate or to own, and the earnings of the road should not be sufficient to pay him a dividend and operate the railroad—I mean a remunerative dividend—does not the public for which this road was authorized and created have a right to have the service performed regardless of the per cent of earnings; I mean, anywhere above confiscation? Does not the public have the right to demand that the public shall not be the sufferer as between the private investor, with this knowledge, and taking these conditions and this property cum onere; is not the public entitled to first consideration as against the bondholder or stockholder?

Mr. LOVETT. If he can not get a return out of a reasonable rate, he is not entitled to it.

Mr. SIMS. Is there any contract between the Government and a railroad corporation when it builds a railroad that it is to have reasonable earnings?

Mr. ADAMSON. Judge Sims's question was properly answered by the Negro who said, "Poor pay, poor preacher."

Mr. LOVETT. No, sir; but there is a contract between him and the Government that he is entitled to charge a reasonable rate.

Mr. SIMS. But suppose the so-called reasonable rate does not make earnings; I mean in connection with an efficient service to the public. Would he be permitted to abridge the efficiency of his service in order to increase his private gains?

Mr. LOVETT. That depends on what you mean by "efficiency." That involves another definition.

Mr. SIMS. Service equal to the expectation and requirement of a railroad located in that locality, as compared with what other railroads give.

Mr. LOVETT. As compared with what other railroads give? I do not think you can require that. Judge Sims, I can not possibly define a reasonable rate. I can only tell you that a man who invests his money in a railroad is entitled to have that railroad charge a reasonable rate. That involves a great multitude of circumstances.

Mr. SIMS. I do not expect you to go through them all now.

Mr. ADAMSON. Judge Sims, do you mean that the accommodation must be more than the revenues will pay for and justify?

Mr. SIMS. I mean this and nothing else—that when a man invests his money in a public utility he takes all the chances of profit and loss, no more and no less than goes with such an investment, and that it is encumbered with the power and sovereignty of the Government to place such conditions upon that railroad as are required in order to perform the public service.

Mr. LOVETT. It is entitled to place such conditions on that railroad as are necessary to establish a reasonable rate.

Mr. SIMS. Suppose a reasonable rate did not enable it to perform the duties and services of a public-service corporation?

Mr. LOVETT. Why, the owner would not get any return.

Mr. SIMS. Would he have a right to cease operating the railroad?

Mr. LOVETT. He could throw it over; let the public take it.

Mr. SIMS. In other words, he could lose his property?

Mr. LOVETT. He could lose his property.

Mr. SIMS. But the public, theoretically, must not lose the benefit of a public-utility service by reason of the financial inability of the private owners to operate it according to the public requirements?

Mr. LOVETT. A railroad once constructed, as I understand, can not be taken up without the public consent. If the owners do not operate it, the courts can take it and operate it by a receiver or in some other way.

Mr. SIMS. Or sell it?

Mr. LOVETT. Or sell it. The man who invests in railroad property makes a bad investment if he can not make a dividend on a reasonable rate; and in determining a reasonable rate you take into account the character of the service. An order that would require one railroad to render the same service, run the same number of trains with the same frequency and with the same equipment as perhaps is run by another, would be an unreasonable order in some cases. I can imagine, for instance, that an order that would require some roads to run as many trains and cars of the same character as the New York Central or the Pennsylvania run would be an unreasonable order. It depends on the circumstances, and there are a thousand of them in each case.

Mr. SIMS. Now, then, if private capital is seeking an opportunity to do a public service, it gets it by permission, not by right, and takes it subject to the known requirements of the public.

Mr. LOVETT. That is undoubted.

Mr. SIMS. If the operation of that railroad under reasonable rates, as determined by the body authorized to determine them, whatever they may be, can not perform that service, has he any right to fail to perform the service and yet retain the property in his control?

Mr. LOVETT. If you change the words "requirements of the public" to "rights of the public," I will agree to your statement.

Mr. SIMS. I use the words "requirements" and "rights" interchangeably; that is, to perform the service that a railroad ought to, under those circumstances and conditions. Then, whenever a bondholder loans money on a railroad, he loans it with a knowledge that it is encumbered with this public right.

Mr. LOVETT. Undoubtedly.

Mr. SIMS. And if the railroad can not pay interest on its bonds and operate the railroad within these rights, giving this reasonable public service, he must lose his interest or he must lose his principal, or so much of it as may be lost?

Mr. LOVETT. That is reinforced. Judge Sims, by the data given in the last annual of the Financial Chronicle, of New York, which shows that at that time something over 11 per cent of the railroad bonds of the United States, of companies whose gross earnings exceeded \$1,000,000 were in default.

Mr. SIMS. Well, I am trying to consider this matter in a fundamental way.

Mr. LOVETT. I do not want to appear as not wishing to answer your question.

Mr. SIMS. Are there not some things that the Government may require of the railroads that may cost them money, regardless of the profits of the road or the rates charged by the roads—

Mr. LOVETT. No—

Mr. SIMS. You stated that in national incorporation you would leave certain things with the States to be determined by them; one, for instance, is grade crossings. Now, suppose a State passed a law that required all the railroads operating in that State to abolish grade crossings, with a view to avoiding loss of life, and a compliance with that order renders the railroad unable to pay dividends or interest on its bonds. Would that make the order void on that account?

Mr. LOVETT. No; but it would raise the question of the validity of the order. The State would not have the right to confiscate a railroad under all circumstances by requiring that all grade crossings be abolished. That might be regarded as an arbitrary and unreasonable exercise of police power.

Mr. SIMS. But it is a police power?

Mr. LOVETT. Yes.

Mr. SIMS. And you are in favor of leaving that with the State?

Mr. LOVETT. Yes.

Mr. SIMS. How could there be a more important exercise of the police power than the one I have referred to?

Mr. LOVETT. There are a great many.

Mr. SIMS. And one that would cost the railroads more?

Mr. LOVETT. A great many, but so far it has not been confiscatory, and I do not believe the States would exercise it in a confiscatory manner; and if they did, there would be a remedy in the courts.

Mr. SIMS. I am speaking of a situation where I am supposing that a man who invests in railroad securities takes them with all these possibilities, whether some of them might be, in his mind, unjust or unreasonable, even if they are reasonable and proper it affects the market value of the stocks and bonds, does it not?

Mr. LOVETT. Yes.

Mr. SIMS. If he goes in and makes a mistake, the public should not suffer for his mistakes; but if anybody should suffer, it should be the man who makes the investment.

Mr. LOVETT. If it was the judgment of the legislature—subject to the court's view as to reasonableness—that the safety of the public required the elimination of grade crossings, they would have to be eliminated whether the stockholder gets his return or not.

Mr. SIMS. Who passes on that question?

Mr. LOVETT. The legislature, primarily and ultimately the Supreme Court of the United States, if it becomes confiscatory.

Mr. SIMS. If it is alleged to become confiscatory?

Mr. LOVETT. Yes.

Mr. SIMS. Is there anything more important to the public than the avoidance of accidents, than the frequency of accidents, or the infrequency of accidents, so far as the public service is concerned?

Mr. LOVETT. I do not know whether I am very good, Judge, in answering as to the relative importance of things.

Mr. SIMS. In other words, has human life a commercial value, to be treated simply as an asset?

Mr. LOVETT. Nothing is more important than a man's life.

Mr. SIMS. To the Nation or to himself?

Mr. LOVETT. Well, himself. But we all know that in the process of development of civilization lives are lost. We can not build railroads without losing lives, and accidents will occur. We can not have automobiles without now and then killing somebody. Any State law that would prohibit the operation of automobiles because a man might be killed some time or prohibit the operation of trains because a man might be killed in the building of the railroads would be an unreasonable law. It is inconceivable that a State should pass such a law. You must deal with these things relatively. If a State law arbitrarily required the elimination of all grade crossings, which would bankrupt some railroads, and do great injury to the people and discourage investments in railroads when there was no pressing need, perhaps, for the elimination of any grade crossings, that would involve a question of the reasonable exercise of the police power, which should be reviewed.

Mr. SIMS. Suppose the State of Tennessee or the State of Texas (the legislature) decides that human lives, in their estimation, are worth more than property or the earnings of the railroad companies, and they provide that the railroads in that State must eliminate all grade crossings within a period of 10 years, and it is not unreasonable in the sense that it is impossible for the railroads to comply with that order in that time, and it does and will save human life, and, in a sense, be a saving to the railroad companies themselves, would the fact that that encroaches on the dividends or the interest on the bonds prevent the passage of such a law by the State?

Mr. LOVETT. It depends on the circumstances. If it is a reasonable exercise of the police power, it does not make any difference whether there is a dividend or an interest payment—

Mr. SIMS. In other words, the proper exercise of the police power is one that must be obeyed regardless of expense to the railroad companies?

Mr. LOVETT. Yes.

Mr. SIMS. Yet you are willing to leave that power with the States?

Mr. LOVETT. Yes; that is where it belongs. I do not know of—

Mr. SIMS. If it is a power that is so great as to absorb the earnings of the railroads for a number of years and still be considered constitutional, do you think that is not as necessary to be vested in the Federal Government as any other power you want to vest in it?

Mr. LOVETT. I think the danger of an abuse of that power by the States is extremely remote, and if the States do abuse it there is a remedy in the courts.

Mr. SIMS. That is only a remedy to the extent of confiscation.

Mr. LOVETT. Yes.

Mr. SIMS. That is, it would have to be confiscation; that is, an unreasonable and arbitrary requirement which involves confiscation.

Mr. LOVETT. Judge Sims, I want it always understood that I realize that the people govern this country and always will. If we can not trust the people of this country to regulate the railroads properly, we can not trust anything. In suggesting Federal regulation, Great Heavens, I am not suggesting getting away from the people's regulation, but what I want is a unified system of regulation. As I have said before, I do not care who the regulator is, pro-

vided there is only one. I am not in favor of taking away from the States powers which affect purely local conditions. Leave them where they are. As long as there is a particular grade crossing in a community that ought to be eliminated, it is to be judged by the circumstances of that community and that particular crossing. That is a very different proposition, however, from allowing a State to establish a system of rates that may affect the whole United States or a large territory or to prohibit or restrict the issuance of securities that do not affect that particular locality perhaps one-tenth as much as it affects other localities.

Mr. SIMS. The grounds upon which you seek to have national incorporation apply with equal force to that police power if the proper and lawful exercise of that police power will infringe or reduce the ability of that railroad to discharge its full duties as a common carrier through all the States through which it passes; in other words, it becomes vital; and now, if it is vital, is it any less vital than any of the other things you have been treating as vital?

Mr. LOVETT. If an interstate railroad or any railroad—I do not care how big it is—runs through a community, it must do what is reasonable to protect the lives in that community. The police power of a community must not be sacrificed for the company's welfare. It must be subserved and preserved. It is precisely the same as if it were vested in the Federal Government or the State government. If the regulations are unreasonable, the remedy would be in the courts.

Mr. SIMS. But running through several States, one State might exercise this power in such a way as to cost the railroads running through it twice as much money as another or the other States, and therefore would be drawing upon the revenues of that railroad or its ability to serve the whole line.

Mr. LOVETT. That is possible.

Mr. SIMS. Consequently, the police power, wherever it is vital, or where it is exercised in such a way as to vitally affect the railroads as a whole, ought to be in the Federal Government if any of them are to be there.

Mr. LOVETT. Well, I do not quite follow that. I do not see why that results. I do not believe there is any danger of that condition arising, and if it does, why, there is a remedy in the courts for it.

Mr. SIMS. The assumption is, of course, Judge, that the nationally chartered railroads would comply with any reasonable order; and if it will why leave this in the hands of State legislatures and have further political activity about it in the different States through which the system runs?

Mr. LOVETT. I should like to make it clear, Judge Sims, that my position about this is not in hostility to the States or to State regulation. I have about as much confidence in the average State regulation of the subject as I have in Federal regulation; but it is the multiplicity of regulation and conflicting regulation that I object to. I should about as soon trust to the wisdom of the States in this matter as to the wisdom of the National Government. It is not in hostility to the States. I am personally willing to give it to any one State, but I want unified rules and regulations.

Mr. SIMS. Why leave out so important a thing as the possibility of burdening the railroads by placing upon them matters of grade crossings in one State where other States may not do that?

Mr. LOVETT. I do not give it the importance that you do.

Mr. SIMS. It may be important enough to result in confiscation.

Mr. LOVETT. Yes.

Mr. SIMS. And you could not pay as much dividends or lay aside as much surplus for permanent improvements as if you did not have to meet the requirements of this particular State over other States.

Mr. LOVETT. Of course, if Congress wants to put that matter for the Federal commission, of course it is all right with me.

Mr. SIMS. There is the rub. Even in your proposition, it leaves a great deal of power in the States, touching railroads doing an interstate business, which may be exercised within the law, and yet in such a way as to affect the total earnings of the railroads which run through the State, and therefore become important; and why make two bites at the cherry? If we are going into the nationalization of the railroads, why leave anything to the States?

Mr. LOVETT. Experience is the most valuable guide in such matters. I do not know of any case where that has occurred, and I do know of many, many cases where the national aspect of a situation has been much hampered and interfered with by State action.

Mr. SIMS. An investor who would be called upon to buy stocks or bonds or furnish money to make permanent improvements—has he not looked at all of these possibilities?

Mr. LOVETT. Yes; but more to the probabilities.

Mr. SIMS. He gives more weight to the probabilities?

Mr. LOVETT. Yes.

Mr. SIMS. Now, a railroad like yours, running through 11 States, is in this situation: You want to improve the credit of that railroad; in other words, sell bonds at the highest price or at the least interest it will bring.

Mr. LOVETT. Yes.

Mr. SIMS. Why should any of the essential interstate elements of that service be left in the States?

Mr. LOVETT. Because it is unnecessary to deprive the States of that power.

Mr. SIMS. Don't you think that such a possibility would cause your stocks and bonds to call for a higher interest and your stocks to sell for a less price?

Mr. LOVETT. I do not. I do not believe it would affect the price of our stock or bonds one-hundredth part of 1 per cent whether this power is vested in the States or in Congress.

Mr. SIMS. But if it gets to doing so, then you will rely on Congress to take action later on?

Mr. LOVETT. I think, Judge Sims, that the power of Congress to interfere with these purely local matters arises from its right to regulate commerce, and that this question of grade crossings has not burdened interstate commerce and has not hampered interstate commerce, and therefore there is no occasion for Congress to take that over. But the regulation of rates in a certain manner has hampered and disturbed interstate commerce, and the regulation of the issuance of securities has done so as well as the regulation of consolidations and leasing.

Mr. SIMS. Now, getting back to the question——

Mr. LOVETT. I hope I do not appear as trying to evade your questions.

Mr. SIMS. I do not for a moment think so. I am asking for information. Under present regulation and under regulation proposed by you and Mr. Thom, representing the railway executives, the railroads in the future for increasing their facilities, double-tracking, quadruple or quintuple tracking, if necessary, the increased terminals, and for such new construction as the country may require, must depend upon their ability to borrow money through bonds or otherwise, and at such a rate of interest as they can afford to put in this additional construction, or upon the sale of additional capital—stocks—at such a price as will enable them to do it. Therefore the possibility of increasing the railway service of this country equal to its demands and needs depends simply upon the chance of what the market will be for the next 10 years—should that be the period over which this improvement would go—depends entirely on the mere accident of the market as to whether you can do it or not. Is that not true?

Mr. LOVETT. I would not say as to the accident of the market.

Mr. SIMS. I mean market conditions, due to accident or otherwise.

Mr. LOVETT. It is going to depend on whether the investors think that the money they put in is going to bring them a return.

Mr. SIMS. Not simply a return, but a better return than some other form of investment offered to them at the time?

Mr. LOVETT. Yes. If they believe the condition is going to be that whatever the public require comes ahead of them, whether reasonable or not, they will be rather slow to put it in.

Mr. SIMS. I think you are exactly right about that. But I think the public's interest is the paramount interest, and it should be the object of Government and of Congress to provide such facilities and such efficiency of service as the public needs require, regardless of whether it pays or does not pay, because there is no compulsory investment in these matters. They do not have to invest.

Mr. LOVETT. Yes; and the public is no more successful than an individual in getting all it wants. The public can not have all of the money necessary for the improvement of the railroad facilities of this country upon the public's terms. The public must accord to this additional capital returns in order to get it, because, as you say, the investor is not obliged to put in his money, and therefore the public can not dictate the terms on which it will get the money.

Mr. SIMS. And the public does not have to have railroads privately owned and operated?

Mr. LOVETT. Not at all.

Mr. SIMS. So there are two independent conditions?

Mr. LOVETT. Exactly.

Mr. SIMS. But I want to see what prospects there are to get this money in the old way; that is, by the sale of bonds, by borrowing temporarily, or by sale of stocks for the next 10 years.

Mr. LOVETT. Yes; that is the live question.

Mr. SIMS. And to me it seems to be an exceedingly unfortunate question. Is it reasonable to suppose that railroad securities in the future will sell better than they have in the past unless there is an increased earning—I mean unless there is an increased dividend, or earnings out of which they pay an increased dividend—when they have to compete with every form of other investment, the earnings of

which have been increased by reason of the European war and by reason of so many other kinds of activities, industrial and otherwise, offering a higher rate of interest or dividend?

Mr. LOVETT. I indicated in my statement the other day that I believe investment rates are going to be higher for several years than they were prior to the European war, because of the great demand for money.

Mr. SIMS. Now, between the demand of the people for lower rates and better service and the demand of the private investor for higher interest is the real conflict?

Mr. LOVETT. Yes.

Mr. SIMS. And you believe that that conflict can be better met by having as few regulating bodies as possible and unifying all the regulations and by having national charters for all railroads by compulsion of law?

Mr. LOVETT. I would not say fewer regulating bodies. I do not care how many—

Mr. SIMS. I mean sovereignties.

Mr. LOVETT. But, for one, I am satisfied that money necessary for railroad development can be gotten more readily and upon better rates by having unified regulation and complete regulation than by having the present system.

Mr. SIMS. You referred to a very interesting matter in your leading statement with reference to the advanced rates in the official classification of territory. I remember with a good deal of interest that contest that went on for a long while, because I undertook to make what I call a "high-brow" speech on that subject the 14th of January, 1914, in which I took the position that the average 5 per cent rate increase was not needed by the good, well-to-do railroad companies of that section, like the Pennsylvania, and was not sufficient for the weaker roads. And so I had an opportunity to investigate that question. Finally, when the war came on, the commission, on account of causes presenting themselves that had not before presented themselves, granted the increase. Now, the railroad companies claimed that increase was absolutely necessary.

Mr. LOVETT. Did not your examination convince you that it was?

Mr. SIMS. You mean at the time that the increase was made? It did not convince me before because, as I say, I made a speech in opposition to it. But that was a "high-brow" speech, a written speech. That is what I call a "high-brow" speech, one that is prepared with care, which is the best way to prepare them.

Now, I never knew until to-day that the great State of Pennsylvania, the railroads of which State were perhaps benefited by that increase more than any other State in the official classification territory, by the power of the State commission nullified the action of the Interstate Commerce Commission, which the railroad companies said was absolutely essential. That was not an action by the Government; the Government did not direct it to be done or make an order or anything of that sort, but authorized it after three hearings.

Mr. LOVETT. All I know about it is hearsay. I heard at the time that the State of Pennsylvania made a reduction in coal rates that applied to tidewater in Pennsylvania.

Mr. SIMS. In Pennsylvania?

Mr. LOVETT. Yes.

Mr. SIMS. Which was one of the largest items; in other words, perhaps there was more coal tonnage than any other tonnage on the railroads in that State?

Mr. LOVETT. Yes; I suppose so. All I know about it is hearsay. If they reduced rates on coal in Pennsylvania to tidewater that would force a reduction on rates to New York, and that would be very far-reaching. I think you had better get some man from Pennsylvania to tell you the exact facts about that. That is my understanding of what transpired.

Mr. SIMS. But anyway the point is that a State did negative or nullify the action of the Interstate Commerce Commission in its application to coal?

Mr. LOVETT. It substantially did; that is my understanding.

Mr. SIMS. Could it not have done so in reference to every item contained in that permission?

Mr. LOVETT. Yes; I should think so.

Mr. SIMS. And the State judges of necessity making such orders themselves.

Mr. LOVETT. The State judges or the State commissioners?

Mr. SIMS. It is the same thing. The commissioners can only execute the law through the power of the State. What I am trying to get at and understand is, how are you going to get all this borrowed money in the next 10 years if the States are to retain the powers that now exist and to which they seem to be entitled under the Constitution?

Mr. LOVETT. It is not possible at all, Judge Sims, if they shall retain the power to do what they did in the Pennsylvania cases.

Mr. SIMS. There is no question about the validity of the power that they did exercise there.

Mr. LOVETT. It was perhaps valid at the time. I do not know as to that. But it would not be valid if Congress said they should not exercise it.

Mr. SIMS. By passing new laws?

Mr. LOVETT. Yes; that is the point.

Mr. SIMS. If the legislation which Judge Thom so ably mapped out here, and which you have gone over, can not be procured and is not procured, and regulation as has heretofore been practiced by the States continues, does that mean that we have reached a period of arrested development in railroad construction and operation in the United States?

Mr. LOVETT. To a considerable extent. There are many roads that will be able to continue development; there are many roads that will not. I do not mean to say at all that absolutely railroad development is going to stop. As I indicated in the very outset of my statement, even under existing conditions, certainly we will continue to develop on the Union Pacific.

Mr. SIMS. But you did state there would be no new independent construction hereafter, in your judgment?

Mr. LOVETT. No; and I do not believe there will be whether this legislation comes or not. Of course, there will be local roads here and there, but I believe the railroad facilities of this country in the way of new lines will have to be provided in future by existing systems.

Mr. Esch. In other words, you think there is not likely to be another Henry Rogers to build the Virginia Railroad or another Moffett to build the Cut-off?

Mr. Lovett. No.

Mr. Adamson. Gentlemen, on yesterday this committee agreed to postpone the morning meetings until half past 10. We will therefore adjourn now until 10.30 o'clock to-morrow morning.

(Thereupon, at 1.30 o'clock p. m., the committee adjourned until Friday, March 23, 1917, at 10.30 o'clock a. m.).

## INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT CONTROL AND REGULATION.

FRIDAY, MARCH 23, 1917.

UNITED STATES SENATE,  
JOINT SUBCOMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The joint subcommittee met at 10.30 o'clock a. m., Hon. William C. Adamson (vice chairman) presiding.

The CHAIRMAN. The committee will come to order. Mr. Sims, you may proceed.

Mr. SIMS. I thought, Mr. Lovett, that I would go on with the national charter matter the first thing, but I found that there were some things in connection with the powers that you propose shall remain in the States that I had not interrogated you about. I spent, I think, most of the time talking about the possibility of inordinate expenses being placed upon a railroad by a single State requiring all its grade crossings to be abolished. Now, if I understand you correctly, my recollection is that you said that you favored leaving the taxing power over railroad properties to the States, or in the States, as it now exists?

Mr. LOVETT. Yes.

Mr. SIMS. And you made no exceptions?

Mr. LOVETT. Yes.

Mr. SIMS. Do you do that because you think it is sound economic policy to adopt, or are you suggesting it simply in order to get it out of the way of this general nationalization of railways, a matter that you think might prevent the States from more readily accepting it?

Mr. LOVETT. I do it from my general judgment of the situation as to what is best, bearing in mind, Judge Sims, the general proposition that I hope will always be understood—my belief that all these matters that are necessary to be exercised by the National Government ought to be exercised by the National Government and the other things that are not necessary and are more local than national should be left to the States. I believe that in the matter of corporate functions and corporate powers they should all be the same. I believe that in the regulation of the issuance of securities the power should be uniform. I believe that in the matter of consolidations and leases and sales they should be uniform, and that rates ought to be regulated by one authority. Those things are of national concern. Almost everything else is more or less local.

Mr. SIMS. Did you not also state in effect in some portion of your examination that taxation of railroads ought to be uniform?

Mr. LOVETT. I stated this: That a more ideal system would be one that would treat each railroad as a unit—a single piece of property—and would provide for the ascertainment of the value of that railroad as a whole, and then certify to the different States the portion of that value within that State upon a track-mileage basis. I think that would be an ideal system which would result in the taxation of every railroad to its full value, or rather in the ascertainment of the full value of each railroad, or of that portion of the railroad in each State, and still leave each State to determine how it would tax it. For instance, in Kansas and Nebraska, one of those States—I am not sure which—usually provides for the ascertainment of the full value of the railroad, and then taxes it one-fifth or some similar percentage of its value. Senator Bristow, does not Kansas have some such provision?

Mr. BRISTOW. No; it is the full value in Kansas.

Mr. LOVETT. Then I think it is Nebraska. But one of those States up to a few years ago would tax the road one-fifth, or some such percentage, of the total value, which was the percentage of value which other property in the State was taxed; whereas the other State would tax it to its full value. Now, if we want to get at the value of the property to be taxed, the most reliable way is for some Government tribunal to ascertain the full value and to allot it among the States. But I am not suggesting that. I say that is an ideal system. I do not believe it is of sufficient necessity to the national interest to require that to be done. Therefore, I am in favor of leaving to the States this question as all other questions not of national concern.

Mr. SIMS. Did you not also state that the taxation by States and counties and cities—in other words, State taxing powers—were gradually growing heavier all the time?

Mr. LOVETT. Yes; and especially by the National Government.

Mr. SIMS. I mean State taxation, county taxation, and city taxation.

Mr. LOVETT. Yes; I think all taxes are growing heavier.

Mr. SIMS. That State taxation is growing heavier all the time?

Mr. LOVETT. I believe that is true.

Mr. SIMS. Then the burden of all the railroads is being increased by State taxation?

Mr. LOVETT. Yes.

Mr. SIMS. And yet you would consider taxation as a local matter and negligible in the proposition that you have for nationalizing the railroads by and through national charters?

Mr. LOVETT. I would not say negligible, but something you can not remedy.

Mr. SIMS. But so unimportant that you are willing to leave it to these very taxing bodies of which you now complain?

Mr. LOVETT. I do not wish to be understood as saying that taxation is unimportant. Rather, in my main statement, I emphasized its importance.

Mr. SIMS. I mean in its effect upon the revenues or the earning capacity or the ability to serve the public by the railroads.

**Mr. LOVETT.** I do not wish to say that it is unimportant. I think it is very important.

**Mr. ADAMSON.** Judge Sims, I wish you would ask the witness right there, please, if uniformity of the system of taxation would not be just as important as uniformity in all other respects.

**Mr. SIMS.** You can answer it.

**Mr. LOVETT.** Relatively, no. I have never heard of any absolutely uniform system of taxation based upon ad valorem.

**Mr. ADAMSON.** You have never heard of any other system or situation like this, where railroads have grown into a national system, and for that reason demand uniformity?

**Mr. LOVETT.** I can understand the reason for wanting it. That is possible. It is not possible to obtain, so far as I know, any absolutely uniform system of taxation.

**Mr. SIMS.** Mr. Lovett, I have an opinion. It may not be worth anything, but it will have some effect on me. I can not get away from the idea that whatever may affect a system of railroads, as a whole, in its ability to serve the public, is a matter of vital concern, and of sufficient concern to be considered; and if it is important to get away from the power of the States to regulate, by forcible nationalizing by Federal charters of all railroads, so as to control rates within the States as well as interstate, I can not see why we should not include and take from the States every power that they now exercise which may be burdensome and operate without uniformity on different portions of that system of roads. That is the reason why I am talking to you about taxation. Now, in a general way, what possible benefit can it be to interstate commerce as to what kind of jails or schoolhouses a State may have through which a railroad runs? Why should an interstate transportation facility be burdened with the building of a certain kind of schoolhouse in Illinois, one costing twice as much as in Indiana, and another one-fourth as much in Ohio?

**Mr. LOVETT.** Judge, that is getting pretty far afield for me.

**Mr. SIMS.** These public schoolhouses are built by taxation, raised by the States and the localities, and if these railroads can be taxed at the option of the State, in any amount, it can make that railroad help build every single schoolhouse and jail and highway and bridge.

**Mr. LOVETT.** Well, I think it ought to help.

**Mr. SIMS.** You think it ought to?

**Mr. LOVETT.** Yes.

**Mr. SIMS.** But will not that affect its ability to render service, as a whole?

**Mr. LOVETT.** I do not see that it would. I believe that the Union Pacific is as much interested in the schoolhouses and the courthouses and the buildings and the development of the communities along its lines as anybody else, and perhaps more than any other single interest.

**Mr. SIMS.** I am speaking about interstate commerce. It may be interesting in developing business along its lines; and, of course, so far as jails are concerned, in which they may imprison violators of the law, it would be better for the Union Pacific or any other railroad to have the jails than not to have them, with the violators of the law running at large. But coming down strictly to the ability of

railroads to establish and maintain credit, that depending upon the amount of burdens that may be laid upon them by Governments, National, State, city, or county, may it not be very material to have such unhindered, unregulated, uncontrolled taxing power of the States?

Mr. LOVETT. Judge Sims, let me say again——

Mr. SIMS. I say now, is not that a possibility, and is it not more than likely a probability?

Mr. LOVETT. I must answer the question in my own way.

Mr. SIMS. In your own way; certainly.

Mr. LOVETT. Let me say again that so far as I am concerned, so far as my judgment goes, it is wholly immaterial to me whether Congress exercises this power or leaves it to the States. Either is satisfactory to me and is consistent with the system of regulation that I am advocating. But when you ask my opinion as to which should exercise the power, I say the States, because I say, first, that the probabilities are that the result would be the same for the railroad in either case. In neither case would there be any reduction in our taxes because of the method under which they are assessed. It is, second, a local matter which each State should determine for itself, how much revenue it wants to raise. It can not very well put more on the railroads than it puts on other classes of property. It ought not to. Sometimes they do, but as a rule they do not.

Now, that being true, I do not see why that authority should be taken away from the States. It is not a matter of national concern. I am not advocating national incorporation of railroads for the purpose of escaping any burden that the railroads ought to bear, but to unify the system of regulation, to unify the control in those matters that are necessary for the development of railroad transportation and that are strictly national in concern. I do not believe, I say again, that this matter of local taxation is a matter of national concern. It has not become so, so far as I have been able to observe, whereas the regulation of local rates in a manner to disturb and disarrange interstate rates is a matter of national concern.

I should like very much to make an answer that would cover the point you have in mind, but I do not see how I can make my position any clearer.

Mr. SIMS. "The power to tax is the power to destroy" is a very old statement by somebody in authority.

Mr. LOVETT. But it does not necessarily mean that the power to tax is going to be exercised as a power to destroy.

Mr. SIMS. Not at all; and neither does it mean that the power of the State to do such regulating as it is doing is going to destroy the railroads of this country or prevent their further development, judged by the development that has already occurred, because it has all occurred under just such regulation.

Mr. ADAMSON. Judge Sims, do you not understand the witness to mean that he does not care to transfer to Federal control anything except those things that are necessary to an efficient, unified system?

Mr. LOVETT. That is my point.

Mr. SIMS. I suppose that is his position. But I suppose the railroad owners and investors want to have peace; that they want to get their properties as far from conflicting control of whatever affects its

value and its earning capacity as possible. Now, if the State of Illinois for instance—because it has an immense number of railroads—should have a tax on railroads twice as high as Indiana, which it might very easily have, not on the number of miles, but the dollar's worth—or mileage, either—it might levy a tax of a dollar a hundred or \$2 a hundred in value; and Indiana might put it at 40 cents per hundred. The great mileage and the great value of the railroads in Illinois would be so large in the amount of taxes to be collected by the State of Illinois and its counties and municipalities as to take so large an amount of the earnings of a railroad that might run through Indiana or some other State as to become in effect a discrimination in favor of Illinois, by which it is indirectly getting back a part of the freight payments of its citizens; and how such a possibility can be inconsequential and negligible to the railroads and not worthy of notice in an effort to nationalize railroads and to make their burdens equal and their services equal to all its patrons I can not see. I can not escape the conclusion that it is important.

Mr. LOVETT. I understand, Judge Sims, that, if the State of Illinois needs ten times as much in taxes as the State of Indiana, the State of Illinois has a right to require the railroads in that State to pay ten times as much taxes as the State of Indiana, provided it taxes all property without discrimination contrary to the Federal Constitution.

Mr. SIMS. For the same purpose?

Mr. LOVETT. And I understand, further, that the Federal Constitution, the fifth amendment—or the fourteenth amendment, rather, as applied to the States—protects railroads against discriminating taxation with respect to their property, and that States can not discriminate unjustly against railroads—not discrimination as between States but discrimination as between property owners in the State of Illinois.

Mr. SIMS. That is, between the taxpayers on the same kind of property?

Mr. LOVETT. Yes. So I say that if Illinois needs ten times as much in taxes as the State of Indiana, and she levies it upon all property, substantially the same, she can compel the railroads to pay ten times as much.

Mr. SIMS. And that that will not affect the railroad in its ability to render its services?

Mr. LOVETT. Yes; it may.

Mr. SIMS. That is what I am asking you. Will it not affect it, and therefore is it not to be considered in a system of nationalization?

Mr. LOVETT. If Congress were to take over the subject of taxation, it is inconceivable to me that the American Congress would pass a law that would prevent a State from taxing railroad property in the same way that it taxes other property and requiring them to pay their just proportion of the State's taxes.

Mr. SIMS. Indiana may be willing to have wooden schoolhouses and Illinois may want brick.

Mr. LOVETT. Illinois, then, is within her rights if she requires brick.

Mr. SIMS. But at the same time she inflicts a tax burden on the same railroad, that serves the two States, out of all proportion.

Mr. LOVETT. No more than upon other classes of property.

**Mr. SIMS.** I know; but the interstate business is affected. Now, what I am trying to find out is, What is the logical reason for permitting the States to retain some powers which may cripple interstate commerce in the full exercise thereof, and then take from it other powers which they are now exercising in a way that, you think, does cripple interstate commerce?

**Mr. LOVETT.** Judge Sims, if I have not demonstrated the proposition that a State has the right to tax railroads consistently with the Federal Constitution for the purposes of the State, without reference to what other States may tax the same railroads, it is impossible for me to throw any more light on that subject. To my mind that is a perfectly obvious proposition, and is not really debatable.

**Mr. SIMS.** And, even with national incorporation, if I catch your meaning, a State would have a right to levy all taxes upon a railroad without the power of Congress to control it that they would have, or now have, if this power remains there?

**Mr. LOVETT.** Congress has the same power to-day that it would have under national incorporation to deal with taxation of instrumentalities of interstate commerce. I assume that Congress would not relieve the railroads; I certainly would not ask them to relieve the railroads. I believe it would be a gross outrage to relieve the railroads of their fair burden of taxation in each State in which they are situated.

**Mr. SIMS.** Nobody wants that, I suppose; nobody questions that. But I am talking about the effect of unequal burdens imposed by different States upon the same system, whereby they impair the ability of that system to render an equal service to all of its patrons at the lowest possible cost.

**Mr. LOVETT.** The State is within its rights to do it, and would be within its rights, whether under Federal incorporation or State incorporation. And our proposal here does not involve any overturning of the Constitution or anything that is impossible, so far as we can see.

**Mr. SIMS.** Then, so far as State taxation is concerned, you do not think Federal incorporation would make any difference at all in the power of the State to tax the property of the railroad?

**Mr. LOVETT.** My confidence in the justice and intelligence of Congress is such that I can not conceive that it would relieve the railroads of any burden of taxation they now are subject to in the States.

**Mr. SIMS.** You can not conceive of it; perhaps you think it is impractical?

**Mr. LOVETT.** No; it is unjust.

**Mr. SIMS.** Congressmen, being elected from the States, would not do that?

**Mr. LOVETT.** It is unjust, Judge Sims, as I said a moment ago. I think it would be an outrage for Congress to do anything of that sort.

**Mr. SIMS.** Do you not think that the people of Texas will think it is unjust and an outrage for Congress to destroy a system of laws which they have built up for their benefit touching railroads?

**Mr. LOVETT.** I have such confidence in the intelligence of the people of Texas that they will see that Congress is within its rights. They would rather keep the privilege themselves, but they are exer-

cising, in my judgment, a right that now belongs to Congress; and while there will be complaint, particularly by the commission, of such a system, because of the big advantage that it affords Texas, it is an advantage to which Texas is not entitled.

Mr. SIMS. You believe in leaving to the States, as I understand it, all the taxing powers that they now exercise—of course, lawfully exercise?

Mr. LOVETT. Yes; that is my idea.

Mr. SIMS. I understood you to make a very serious complaint—that you bring it up as an evidence of the evils of conflicting taxation and conflicting control—that the State of Illinois placed a tax, amounting to \$600,000, on the registration, I believe it was, of a mortgage securing certain bond issues proposed by the New York Central Railroad. Is not that true?

Mr. LOVETT. Yes. That was a license fee that was charged for doing business.

Mr. SIMS. Well, it was a tax, was it not?

Mr. LOVETT. I suppose it might be called a tax.

Mr. SIMS. Of course taxes are often collected by way of license?

Mr. LOVETT. I suppose they are.

Mr. SIMS. You propose to leave that, then, just as it is, after making complaint of it?

Mr. LOVETT. I do not.

Mr. SIMS. Then, you do not propose to leave the States with the full powers of taxation that they now possess?

Mr. LOVETT. I mean the powers of taxing railroad properties. This is a taxation of a corporate function. The Supreme Court denies the powers of the States to impose taxes that are a burden upon interstate commerce. We have pending now in the Supreme Court of the United States a case to test the right of the State of Missouri to tax us for a bond issue; that I mentioned in my direct statement.

Mr. SIMS. So you do not regard the license fee for the registry of that mortgage as taxation?

Mr. LOVETT. No, sir. I should say it is a fee charged by the State—it may be a certain form of taxation—I should say it is a fee charged by the State for doing what the State has no right to charge for.

Mr. SIMS. You mean a penalty, do you not?

Mr. LOVETT. I do not care what you call it, really, Judge Sims.

Mr. SIMS. It is really, in effect, a penalty, is it not?

Mr. LOVETT. I think it is penalizing an interstate corporation.

Mr. SIMS. But it is put into the public treasury and takes the place of taxation, and reduces taxation in the State of Illinois to that extent?

Mr. LOVETT. I have not heard of any reduction of taxation.

Mr. SIMS. It reduces the taxation on the other property of the State of Illinois to that extent; I mean it reduces the requirement for it. That mortgage was issued, was it not, to secure \$100,000,000 of 100-year debenture bonds?

Mr. LOVETT. I am not sure whether this fee was charged in connection with the mortgage or in connection with the consolidation of the Lake Shore and of the New York Central.

Mr. SIMS. Any way the New York Central did issue, or authorized the issuance, of \$100,000,000 of 6 per cent debenture bonds to run

100 years, and convertible at the option of the holder, after a certain period, into stock of the company?

Mr. LOVETT. Yes; not secured by a mortgage.

Mr. SIMS. I say, those are substantially the facts?

Mr. LOVETT. They did make such an issue.

Mr. SIMS. Well, they were bonds, were they not?

Mr. LOVETT. Yes; but not mortgage bonds.

Mr. SIMS. They are a lien on the property of the railroad so far as the stockholders are concerned, are they not?

Mr. LOVETT. They are not a lien on the property of the railroad.

Mr. SIMS. As between the stockholder—

Mr. LOVETT. They are not a lien on anything, Judge.

Mr. SIMS. They are preferred liability?

Mr. LOVETT. They are debentures; in other words, they are the promissory notes of the railroad company unsecured by any lien.

Mr. SIMS. The debts are to be paid before the profits are received; is not that correct?

Mr. LOVETT. That seems to be an elementary legal principle. I did not suppose you would ask me such a question.

Mr. SIMS. I hope people are going to read this who need a little elementary knowledge on the subject. Now, that bond issue was to run for a hundred years, at 6 per cent?

Mr. LOVETT. No; it was to run for 20 years.

Mr. SIMS. A hundred millions for a hundred years?

Mr. LOVETT. No, sir.

Mr. SIMS. Only twenty?

Mr. LOVETT. Twenty.

Mr. SIMS. I have not looked it up, but I saw it referred to in the papers as a hundred years, and that it had gone through.

Mr. LOVETT. I am not sure whether it was 15 or 20; but not over 20.

Mr. SIMS. Well, it illustrates what I am trying to get at, whether it is a hundred or twenty. Now, then, the interest on those bonds, so far as the stockholders are concerned, is a fixed charge upon the earnings of the railroad?

Mr. LOVETT. Yes. They must be paid before dividends.

Mr. SIMS. They must be paid before dividends?

Mr. LOVETT. Yes.

Mr. SIMS. Now, is it your theory that a rate should be allowed upon the property of that company that would pay all its operating expenses, maintenance charges, and all previous charges, and this 6 per cent on whatever amount of bonds they sell, and then to be added a reasonable dividend to the stockholders?

Mr. LOVETT. My theory is, Judge, that the rate should not be less than sufficient to pay a fair return upon the value of the property owned by the company. With such a rate, I feel quite sure they would pay the 6 per cent interest on these bonds and a dividend to the stockholders.

Mr. SIMS. That the earnings should be upon the value of the property regardless of the outstanding debts, or stock mortgages, or anything else?

Mr. LOVETT. No; I beg your pardon. I have said, I think, several times here that I am strictly opposed to the idea that the return on railroad property is to be limited in rate-making; that rates and

returns are a commercial proposition; that a railroad that under a good, fair, and reasonable rate can pay such a dividend is entitled to it, and a road that can not is not entitled to it. That is my theory of rate making.

I do not understand that this country has ever committed itself, or that the Interstate Commerce Commission has ever committed itself, or that even Congress has ever by any act sought to limit the return on railroad property beyond a reasonable rate—that is the only limitation that has been proposed or that has been established—and that Congress has not undertaken to say what is a reasonable rate.

MR. SIMS. I understood you to say, just prior to that, that they were entitled to a reasonable rate on the fair value of their property.

MR. LOVETT. I think they are entitled to a reasonable rate, and that in determining a reasonable rate they must take into account the fair value of the property, not as absolutely controlling, but as part of the evidence.

MR. SIMS. Another question in connection with that, which comes up in a different State, and with which you may not be familiar—I will not name the State—but an existing railroad had leased another railroad company's lines, and it formed a part of the general system of that railroad. It had paid under the terms of that lease 10 per cent on the outstanding stock and maintained the railroad and done everything else that the owners were liable to do. That lease expired. Then the lessor re-leased the property from the owners for 999 years and agreed to pay during that time 7 per cent on all the stock of the company. Now, the lessor is compelled to pay that 7 per cent, as I understand it, as matter of law, whether that particular line of railroad earns it or not. Is not that true?

MR. LOVETT. I assume so, if the lease so provides.

MR. SIMS. I am saying that they guarantee this 7 per cent, and therefore they have got to pay it whether they make it or not?

MR. LOVETT. Yes; if not they default under the lease.

MR. SIMS. And that is putting a charge of 7 per cent upon the stock value of that road for nearly a thousand years. Now, do you think it is a matter of good public policy to allow any private corporation, in order to control and monopolize certain traffic or to create a system, to fix a burden of that character—as much as that—for a thousand years, without the power of the Government to relieve the people who pay the freight, provided a lower freight rate afterwards should be necessary or authorized?

MR. LOVETT. I do not understand that such burden has been imposed or could possibly be imposed upon the public.

MR. SIMS. It is imposed upon the leasing road?

MR. LOVETT. Yes.

MR. SIMS. Now, if the leased road does not pay this 7 per cent the leasing road must pay it out of other funds?

MR. LOVETT. Yes.

MR. SIMS. And in order to have the means out of which to pay it it must collect a remunerative charge, a sufficiently remunerative charge, on other traffic to provide the means to pay that 7 per cent?

MR. LOVETT. No, sir; I do not agree with that. If it can not get funds at a reasonable rate to pay that 7 per cent it will default and will lose its lease. The public does not guarantee a lease, and the Government does not guarantee it. Nobody guarantees any return

on railroad property. All that the public guarantees or all that the Government guarantees is a reasonable rate, and it is up to the railroad to get the 7 per cent out of it and pay it if it can.

Mr. SIMS. That is the legal situation, I understand—the law.

Mr. LOVETT. And the practical situation, too.

Mr. SIMS. Yes; and the practical situation; but the company that has leased this piece of property, its stockholders, its operating officers, are under a strain and an effort to so manage that property as that this will be paid.

Mr. LOVETT. Undoubtedly.

Mr. SIMS. Therefore it is, to that extent, against the public interest that is being served?

Mr. LOVETT. I can not follow that, Judge Sims. The officers and directors of every railroad company are under a strain to make it earn money, to make it earn its interest, to make it earn not merely rental on the leased line, but to earn big dividends; but you can not earn interest and big dividends by working against the interests of the public.

Mr. SIMS. That is one of the incidents, of course, of private ownership—and we are considering private ownership and regulation at this time—that I do not see that a State commission or a national commission could change, unless they had the right to abrogate contracts.

Mr. LOVETT. I understand that the commission need not pay a particle of attention to the lease contract and the 7 per cent interest if they do not wish to; that when rates are challenged as too high they will hear the circumstances, and will consider not what the value of the lease is, but what is a fair return upon the value of the railroad property, and while they are not controlled by that, they will take it into account, and if the railroad can not earn enough to pay the lease rental it simply defaults. Railroads are not protected against improvident and foolish contracts. They make them like anybody else, and they have to pay the penalty through failure if they make too many.

Mr. SIMS. I wanted to take up this other matter which I suggested, as to the question of national incorporation and the way it may be affected by conditions that exist, or which may hereafter exist. I want, first, to get your idea exactly as to what power should be assumed by the Government—I mean actively assumed through national incorporation—that is not now within their power, or is not now being exercised fully by the national authority.

Mr. LOVETT. I have sufficiently stated that.

Mr. SIMS. I was going to say that I think I have a general understanding of what you stated about that and I will not ask you to repeat it.

Mr. LOVETT. I should be glad to do so, if you wish.

Mr. SIMS. No; it is not necessary at all, as to what I am going to ask you, as I see it. Have you ever, or has your committee ever formed or drafted a form of national charter for railroads which you would like or think it wise to be authorized?

Mr. LOVETT. I do not understand that the advisory committee has. I suppose a great many members have made attempts in that direction. I know that I did at one time.

Mr. SIMS. Do you not think it would be of benefit to this committee to have a draft of a national charter which the railroads think it wise, or which you gentlemen think it wise we should permit them to have; not only permit them, but compel them to accept?

Mr. LOVETT. I do not think it would be wise for a railroad man to come forward with such a measure, because we all know, Judge Sims, there are many people in this country who would at once attack any bill or measure that a railroad officer brought forward, because of the source from which it emanated without regard to the merits of the bill. I do not think it would be fair to those who advocate national incorporation to call upon them to come forward with a bill embodying exactly their ideas because I think many people would be prejudiced against it.

Mr. SIMS. Senator Newlands presented, for your consideration, a draft of a bill which he had drawn about 10 years ago, for national incorporation, which you did not approve, as a whole.

Mr. LOVETT. Not as a whole.

Mr. SIMS. I say, as a whole you did not approve it?

Mr. LOVETT. No.

Mr. SIMS. You shot his bill to pieces, so to speak—his plan.

Mr. LOVETT. I am sorry.

Mr. SIMS. I do not mean in the sense of a high explosive, but I think the Senator admitted, practically, that you had shot it to pieces. Now, why is it not to the public interest to let everybody have a right to shoot any public measure into pieces, if they can do so? If there is ground for it, why not let us know what it is?

Mr. LOVETT. I believe it is very important that every proposition brought forward be shot at by anybody who really has any aim about such a matter.

Mr. SIMS. And do you not think that you can come nearer to hitting something that you are shooting at when you can see it in concrete form?

Mr. LOVETT. Yes.

Mr. SIMS. Seriously I believe it would be of help to the committee—and no injury to your cause—for the railroad executives' committee or the committee of railroad executives, if they have in their minds what they think is to the public interest, as well as their own—and they are part of the public—to come forward with a form of national charter for the railroad companies of the country to adopt under compulsion that they think will meet the requirements of the situation. I think this proposition is so new that you should present a draft of the bill that you think would answer the purposes which you seek, and let the public shoot it to pieces if they can.

Mr. LOVETT. I believe the discussion of the subject and the outlines of the plans we are advocating has been, and will be, such that nobody can very well misunderstand just the general form of the measure; and then it becomes a question of merely draftsmanship.

Mr. SIMS. If that is true, it will not hurt the proposition if it be drafted?

Mr. LOVETT. Yes; but when you come forward with a bill drafted by the railroads, I think you will agree with me that a great many people will attack it for that reason alone. I do not think it would help the cause we advocate, but I do believe it would distinctly hurt it.

Mr. SIMS. If the attacks were weak and not reasonable or logical, they would fall of their own weight. In other words, you could come back at the attacks, which, no doubt, you would do.

Now, Mr. Lovett, if Congress undertakes to legislate on this subject by requiring all the railroads doing business in the United States to take out a national charter, has not Congress full power to place every condition in that charter that it sees fit?

Mr. LOVETT. I would not say it has the right to destroy property rights.

Mr. SIMS. I mean, above confiscation, so far as regulations, requirements, and so forth, are concerned?

Mr. LOVETT. I do not think Congress has any power to destroy property rights.

Mr. SIMS. I said, "above confiscation," and "confiscation" means "destruction," as I understand it.

Mr. LOVETT. It has the power to incorporate in that act any regulation that it deems proper and necessary that does not take away property rights.

Mr. SIMS. I suppose, of course, that you expect the general charter law to be applied to all railroads exactly alike?

Mr. LOVETT. Yes.

Mr. SIMS. That there would be no charter granted to one railroad different from another?

Mr. LOVETT. I hope not.

Senator CUMMINS. May I ask a question just there?

Mr. SIMS. Yes.

Senator CUMMINS. It seems to me that your answer is rather broad. Could Congress put anything into an act of that sort that would constitute regulation of commerce within one of the States?

Mr. LOVETT. I think not. Of course I mean it might put in something based on the authority to establish post roads or for the national defense or something of that sort. I do not think the power of Congress to create corporations is limited to—

Mr. ADAMSON. Could it put anything in there in conflict with the Constitution any more than it could in any other matter?

Mr. LOVETT. No.

Mr. SIMS. Could it not put in a system of regulation, so far as any system of regulation could be incorporated in a charter? Could it not incorporate such a system of regulation in the charter?

Mr. LOVETT. Within the limits of the Constitution.

Mr. SIMS. Of course I am always assuming that Congress will not pass knowingly an unconstitutional law, and that neither the railroads nor the people will seek or ask for anything of that sort.

Mr. LOVETT. Congress has the right to regulate commerce, to establish post roads, to provide for the national defense, and to make war. Now, within those limits, and within the limit of such powers as may be necessary for it to exercise in order to make those express powers effective; and within the limits of constitutional restraint, it has the right to pass such a bill as it wants.

Mr. SIMS. Would you think it advisable to provide in this national charter that nothing in this charter shall be construed as abridging or affecting the rights of the several States through which any railroad may build its lines, from levying and collecting such lawful taxes as State or other taxing bodies may determine;

to make such police regulations and public health regulations as the States now do or seek to do? Would you be willing to have that made a provision of the charters—that the charters should say that it was not to abridge the States' rights in any of those respects?

Mr. LOVETT. I would not say, "as they now do." I think the act ought to contain a provision that nothing in the act should impair the rights of the States with respect to the taxation of railroad property and the exercise of such police powers as are not inconsistent with the terms of the act. I take it that the act would expressly give the right to the Interstate Commerce Commission or other commission to exclusively regulate securities, exclusively regulate rates, and to exclusively regulate the consolidation and combination of railroad companies. Those are the main things. Now, consistent with those general purposes, of course, the act ought to provide that the States shall retain their powers.

Mr. SIMS. In view of the recent decision of the Supreme Court, could not that charter provide—I mean the law authorizing the charter to be issued—that no laborer doing service for any of these incorporated companies shall be required to work over eight hours in any one calendar day?

Mr. LOVETT. I think so.

Mr. SIMS. To regulate the labor question so far as that is concerned with respect to the hours of service absolutely through the charter?

Mr. LOVETT. I will not make any argument against the Supreme Court.

Mr. SIMS. And would it not have the power to go further and to say that this charter shall not abridge the rights of the employees of railroad companies to voluntarily quit the service of those companies either individually or by concerted action at any time?

Mr. LOVETT. Certainly it could go further and say that.

Mr. SIMS. It could do all that?

Mr. LOVETT. Yes.

Mr. SIMS. I thought so, but I wanted to find out from an authority that I do not question and that nobody else will question.

Mr. LOVETT. Thank you.

Mr. SIMS. Now, let us come down to a practical question. I believe that you were the attorney for Mr. Harriman for a long time, and we have the authority of Mr. Roosevelt that Mr. Harriman was a practical man and took a practical view of all these things.

Mr. LOVETT. That is the good "authority" to which you referred, I presume.

Mr. SIMS. You have had a good opportunity to become a good practical man; nobody questions that. Now, any legislation that is impracticable is impossible.

Mr. ADAMSON. Is Judge Sims trying to bolster up both Roosevelt and Harriman by this witness?

Mr. SIMS. I think perhaps I could.

Mr. LOVETT. You can in their respective fields.

Mr. SIMS. Their fields may have been larger than yours?

Mr. LOVETT. As a hunter and as a railroad man.

Mr. SIMS. No; I am talking now of great, broad, public-service questions, especially along the line of railroads.

Mr. LOVETT. I believe that was a subject familiar to one of them.

Mr. SIMS. When we go to the people to be elected or reelected to Congress, and we say, "We propose in the national interest——"

Mr. ADAMSON. You noticed that Judge Sims prefaced his last question by saying, "Coming down to practical things," and he is talking about getting reelected.

Mr. SIMS. That is a very practical question, too, for every Member of Congress and Senator, too, and political party.

Mr. ADAMSON. Yes.

Mr. SIMS. And we say to them that we think it is in the national interest that all the authority now exercised by the States should be vested in the National Government; in other words, be just what you think it ought to be. Now, when we begin to tell them the reasons for that—that we do not want the States to have the power that Texas has exercised, to require every railroad that operates within its boundaries to take out a State charter; that you want to take away from Texas the power to do what they think is best for Texas, even though it is a broad, patriotic view, and defensible for national reasons, how many Members do you think would be elected from Texas on your platform?

Mr. LOVETT. I think, Judge, that if you were a candidate in Dallas or Houston on that proposition, you would be beaten, but if you were a candidate in Shreveport, you would be overwhelmingly elected.

Mr. SIMS. That is in Louisiana.

Mr. LOVETT. Yes.

Mr. SIMS. Now, I wanted to say, and I started to say this: That what is impracticable is impossible in legislation. If this charter can not be procured at this time—and I do not believe it can—admitting, for argument's sake, that it will accomplish all that you expect to accomplish—and you only wish to accomplish that which is best for the country as a whole—I am not myself opposing this thing, nor proposing it, but I am trying to find out all the facts pertaining to it—if this legislation which has been proposed by the committee of executives can not be procured, or some other legislation that will have the same effect upon railroad interests and railroad credits which you suppose this will have, what is to be the result to this country and its commerce and general well-being?

Mr. LOVETT. If this is a political question, Judge Sims, of course I am not authority. But I believe very strongly, that if the people understood this question, that if instead of going about and saying "This is what the railroads want; this is a railroad scheme," candidates and leaders would say that "As a result of our study of this subject we are convinced that some such system of regulation is for the general welfare of the country," and would explain it to the people, it would be perfectly practicable to make it effective.

Mr. SIMS. You think the people would sustain it?

Mr. LOVETT. I do. I believe if they turned it down it would be because they did not sufficiently understand it, except in those few localities that profit by the present arrangement.

Mr. SIMS. Of course, you are not answering my question, Mr. Lovett.

Mr. LOVETT. I thought I was.

Mr. SIMS. No. I asked you if nothing of this kind could be done, or something else which would accomplish the same purpose, what would be the result upon the general welfare of this country?

Mr. LOVETT. I have studied this subject a great deal, and this is the best method that I am able to suggest of accomplishing the object. Now, the same purpose or the next best step in the same direction, if there be a prejudice against Federal incorporation, would be to attempt it through complete control of the existing State corporations. It would be less effective—not half so good—but it would be better than the present system.

Mr. SIMS. Do you mean by unification of some kind?

Mr. LOVETT. I mean by Congress undertaking to regulate all rates, both State and interstate, and all the securities of the corporations, and the question of the combination and leasing of those engaged in interstate commerce.

Mr. SIMS. That is a part of the legislation you are asking for in your general program?

Mr. LOVETT. Yes; but that is by existing corporations rather than by Federal corporations.

Mr. SIMS. I will ask you again: If none of these things which you suggest are done, or something else that will have the same effect, what will be the effect upon this country and its general welfare?

Mr. LOVETT. And the present system, or lack of system, of regulation continues?

Mr. SIMS. Yes; and nothing done along the lines you suggest?

Mr. LOVETT. Why, I think, Judge Sims, there will be rather a stagnation in railroad development, and the people will not have the character of railroad transportation that the business interests of the country require. That condition will continue until, sooner or later, something like this will be done.

Mr. ADAMSON. If you will permit me to ask him right there?

Mr. SIMS. Yes.

Mr. ADAMSON. I understood from your former statements that you do agree that a great deal might be done to improve the present imperfect system?

Mr. LOVETT. Yes.

Mr. ADAMSON. You do not denounce the present system as an utter failure, but you say it is incomplete and imperfect?

Mr. LOVETT. Yes; and the evils of it are not fully developed, because, as I pointed out in my direct statement, there was none of this conflicting State regulation in many sections as, for instance, in the trunk line territory 10 years ago, and the full effect of it has not been developed.

Mr. ADAMSON. So far as the regulation of securities is concerned, Judge Sims will remember, in connection with his repeated reference to the Texas situation, that a Texas Member has introduced and pushed legislation to regulate stocks and bonds under the present system.

Mr. LOVETT. But I think it is true that the Texas Member is not in favor of making his bill supersede regulation of the same matter by the Texas commission.

Mr. ADAMSON. I think he is willing to admit that whenever it is put in force it will supersede it, under the decisions of the Supreme Court.

Mr. SIMS. I introduced a bill to regulate securities, which did not provide that the State authority should be consulted, because I had

in mind that it would help the credit of the railroads to have a national authority pass upon, if not the wisdom, at least the regularity and validity of the issues, so far as those stocks and bonds were concerned, when marketing them in foreign countries.

Mr. LOVETT. It will help, Judge Sims, and it will be a distinct step forward to provide for exclusive regulation by the Interstate Commerce Commission of the issuance of securities. It will not solve the entire problem, but it will be an immense improvement on the present situation.

Mr. SIMS. I understand that the State commissions are not making any objection to legislation looking to that end.

Mr. LOVETT. I understood Chairman Thelen, of the California Commission, in his statement here to intimate that they were not opposed to it.

Mr. SIMS. I thought there had been resolutions passed along that line. Mr. Bristow, perhaps, could tell us, if he is present.

Mr. LOVETT. I fancy you will find some State commissions will be insisting upon cumulative regulation—not only their approval, but to give still another cause of delay, by adding the Interstate Commerce Commission without making it exclusive. I doubt if the State commissioners are unanimously in favor of Congress exercising this—

Mr. SIMS. What I meant more particularly was that there was no organized opposition to it. Now, I will ask you about a matter touching upon the earnings of these railroads under present conditions. The fiscal year beginning with the first day of July, 1914, and ending, I believe, the 30th day of June, 1915, taking it as a whole, as the war came on the 30th day of July, was not what you would call a hard year upon railway earnings or profits in this country?

Mr. LOVETT. The fiscal year ending June 30, 1915?

Mr. SIMS. Yes. Eleven months of it were covered by the European war.

Mr. LOVETT. It was a very hard year for the western roads, but it was not, I think, such a bad year for the eastern roads, because the improvement in business throughout the manufacturing districts commenced early in 1915. I know it commenced East before it reached the West.

Mr. SIMS. Let me ask you further whether or not the fiscal year beginning July 1, 1915, and ending June 30, 1916, was an average year or an extra good year?

Mr. LOVETT. It was extra good as to gross and also as to net earnings. I should say—an unusually good year.

Mr. SIMS. Now, if under those conditions the railroads made a good, satisfactory—and when I say satisfactory I mean not in the sense of satisfaction to private owners as to getting all they can, but satisfaction in the ordinary sense. Now, for the year ending June 15, 1915, the Union Pacific earned net 11 per cent?

Mr. LOVETT. June 30, 1915?

Mr. SIMS. Yes; ending that year.

Mr. LOVETT. Practically 11 per cent.

Mr. SIMS. I will say practically.

Senator CUMMINS. On what?

Mr. SIMS. Net earnings.

Mr. LOVETT. On its stock.

Mr. SIMS. The next year, then, it earned 15.65 per cent—about that. That is a western road, and the Southern Pacific also is a western road. During the hard year, I will call it the hard year by way of distinction, it earned 7.2 per cent?

Mr. LOVETT. You are talking about the year ending June 30, 1915, are you?

Mr. SIMS. Yes; we will call that the hard year, and the next year we will call the good or the average year. And the next year it earned net 11 per cent. That is a western road; and the Atchison, I suppose, you would term a western road, would you not?

Mr. LOVETT. Yes.

Mr. SIMS. The hard year its net earnings were 9.2 per cent; the next year 12.3 per cent. The St. Paul, which, I suppose, is also a western road, only earned 3.28 per cent in the hard year and 7.33 per cent in the next or the average year.

Mr. LOVETT. What are you calling the average year?

Mr. SIMS. The one beginning July 1, 1915, and closing with June 30, 1916, the fiscal year.

Mr. LOVETT. I say I think that was a good year for the eastern roads and good for the western roads.

Mr. SIMS. But I am stating what the western roads did during that year that was not distinctly good for them. The Northern Pacific, which is a western road, in the hard year earned 7.58 per cent net, and the next year, which was not particularly good, you say, for western roads, it earned 10.48 per cent. The Chicago, St. Paul, Minneapolis & Omaha road, which is a western road, as I understand it, in the hard year earned 7.72 per cent net, and the next year 11.97 per cent. The Northwestern, which I understand to be a western road, earned in the hard year 7.5 per cent, and in the next year 11.4 per cent. The Soo Line—is that a western road?

Mr. LOVETT. I should say yes, that was West, or Middle West.

Mr. SIMS. In the hard year it earned 7.87 per cent; in the next year it earned 16.3 net.

Mr. LOVETT. That is a Canadian road.

Mr. SIMS. It is a western road in the sense of commerce, I suppose, as far as this country is concerned. The Wisconsin Central in the hard year had a deficit; in the next year it earned 9.18 per cent net.

Mr. ESCH. That is part of the Soo system now.

Mr. SIMS. I am just taking what is published here in Mr. Thelen's article, taken from the Financial Age of October, 1916. That is my authority. In the South the Alabama & Great Southern earned 9.4 per cent in the hard year and 13.6 per cent net in the next year. The Illinois Central, both South and North, earned 6.27 per cent in the hard year and 10.8 per cent in the good year. The Louisville & Nashville, a southern road, earned 6.8 per cent in the hard year, and 19.4 per cent in the good year. I hate to read this next one, I am afraid I do not understand it. The Southern in the hard year earned 0.03 per cent, and 5 per cent in the good year.

Mr. ADAMSON. That is an eleemosynary institution.

Mr. SIMS. The Lehigh Valley is an eastern road, is it not?

Mr. LOVETT. Yes.

Mr. SIMS. It was among the group of roads you think had unusual earnings during the fiscal year, during the year ending June 30, 1916.

Mr. LOVETT. I think so.

Mr. SIMS. The Lehigh Valley earned 10.4 per cent during the hard year and 12.65 per cent during the next year. The Pennsylvania Railroad earned 19.36 per cent during the hard year and 21.8 per cent during the good year, net earnings. The Baltimore & Ohio earned 8.5 per cent during the hard year and 11 per cent net during the good year.

Mr. LOVETT. I suspect you have only part of the Pennsylvania system in those figures.

Mr. SIMS. I beg pardon, I have made a mistake; that should be the Jersey Central instead of the Pennsylvania. It is the Jersey Central which earned 19.36 per cent in the hard year and 21.8 per cent in the good year. The Pennsylvania earned 8.05 per cent in the hard year and 11 per cent in the good year. The Baltimore & Ohio earned 5.5 per cent in the hard year and 7.3 in the good year. The Reading in the hard year earned 10.6 per cent and 11.5 per cent the next year. The Chesapeake & Ohio earned 4.25 per cent in the hard year and 11 per cent in the good year. The Norfolk & Western earned 8.8 per cent in the bad year and 16.7 per cent in the good year. The New York Central for the fiscal year ending December 31, 1915, earned 8 per cent in the hard year and 18 per cent in the good year.

Mr. LOVETT. I would not call December 31, 1915, a hard year for the Pennsylvania or the New York Central, because there was quite a business boom.

Senator TOWNSEND. I understand all this is in the record now. .

Mr. SIMS. I read it for the purpose of going in the record, as I did not want to cut Senator Newlands's magazine. But to add those years together, would it not show good, reasonable, remunerative net earnings for those railroads during the two years combined?

Mr. LOVETT. For those two years?

Mr. SIMS. For those two years; yes.

Mr. LOVETT. I can not answer for any except the Union Pacific. I am not familiar with the details of the others. You show there that for the fiscal year ending June 30, 1915, the Union Pacific earned 11 per cent.

Mr. SIMS. And 15.65 per cent in the next year.

Mr. LOVETT. Only about 7 per cent of that was from the railroad. The rest was from security investments. Something over 7.15 per cent was what we earned upon the railroad. The next year, 1916, we earned 15.65 per cent. That was after the start of the big business I described yesterday. For the year ending December 31, 1916, we earned about 17 per cent, including investments. Of course those earnings were perfectly abnormal. Our gross earnings were \$10,000,000 more than it ever had been in the history of the company through these extraordinary conditions.

Now, take the earnings of other companies you have described: I do not know how much of it may have been from investments. And bear in mind that proper railroad management under the system of accounting by the Interstate Commerce Commission requires a substantial part of what appears surplus to go back into the property, to meet expenditures that will never add anything to the revenue or reduce expenses—items that in my judgment really ought to be charged against current income. In the case of the Union Pacific or any of the roads you mentioned, and out of their normal

earnings a good portion of the "net" you have described must go back into the property for purposes that will never benefit the company, but which are necessary to the proper maintenance of the property. I should like to add that apparently you read only those roads that earned dividends.

Mr. SIMS. These are those that are published in this Financial Age, and I did not look any further for the rest of them.

Mr. LOVETT. About 35 per cent of the capital stock of the railroads of the United States, year in and year out, pays no dividends.

Mr. SIMS. This does not refer to dividends; it is net earnings. I want to ask you as to these railroads I have here mentioned, unless it should be one or two, if the net earnings do not indicate a condition, taking a hard and a good year together, that would give them good credit anywhere that condition was known?

Mr. LOVETT. It is not a hard or a good year. The last year, the fiscal year ending June 30, 1916, was an extraordinarily good year. The year ending June 30, 1915, for the eastern roads, or rather the last half of it, was a good year—the first half was a hard year. The years you have taken are not at all illustrative of the normal conditions in the past.

Mr. SIMS. Well, one is extremely low, you admit that?

Mr. LOVETT. No; not extremely low.

Mr. SIMS. That is the very reason the Interstate Commerce Commission was urged to give the 5 per cent rate increase on account of war conditions having destroyed the service of railroads, the volume of their business.

Mr. LOVETT. The eastern railroads had applied for an increase and had been denied prior to the breaking out of the European war. Immediately after the breaking out of the European war they applied, and because of the bad business conditions and their financial necessities an increase of rates was granted.

Mr. SIMS. The reason was the war had so reduced their earnings?

Mr. LOVETT. That was in the early days of the war before the business resulting from the war in the eastern district started. That did not commence until the last half of the fiscal year ending June 30, 1915, as I understand, so there were some months of very poor business and some months of very good business during that year.

Mr. ADAMSON. I did not hear you read from Mr. Thelen's figures the Central of Georgia road, and I do not understand why he discriminates against a road that runs through the best country and serves the best people.

Mr. SIMS. I am reading from the Financial Age of October 21, 1916.

Mr. ADAMSON. That is discrimination that the whole railroad legislation is opposed to, you know.

Mr. SIMS. Now, in 1908, according to the report of the Interstate Commerce Commission, which I believe reports railroads where the gross earnings are a million—

Mr. LOVETT. They have a class, I believe, of roads with gross earnings of \$1,000,000 or more and a second class with earnings of a million to one hundred thousand.

Mr. SIMS. In mileage reported for 1908, 227,257.02 miles. The operating revenue for that year, eight years ago, and that was after

the panic, for the panic came in 1906 and 1907, the operating revenues for that year were \$2,440,638,832. The railway operating expenses for that year were \$1,710,403,451. There was a net revenue from railway operations of \$730,235,781. Now, that is the lowest year reported in either gross or net. I am not going to read all this out now for your benefit. These mileages are substantially the same all the way through, so I take it it is not necessary to repeat the mileage every time. The next year, 1909, the net operating revenue was \$823,171,097. That shows an increased earning and a slight increase in mileage, because it was 232,000 in 1909, as against 227,000 in 1908. The next year, 1910, there was a net revenue of \$930,262,457, with an increase of only about 2,000 in the mileage. The next year, 1911, was not so good as that one, being \$876,522,857. The next year, 1912, it was \$871,358,340; the next year, 1913, it was \$957,195,208; the next year, 1914, it was \$845,216,254; in 1915 it was \$867,510,246; and in 1916 it was \$1,176,804,001.

Now, leaving out 1916 as being somewhat exceptional, and really 1914 and 1915 ought to be left out, too, but it actually showed a greater net earning than it did before.

Mr. LOVETT. What year is that, 1914?

Mr. SIMS. I mean 1915 was \$867,000,000 in round numbers, and the year before, 1914, that was for 1913 and 1914, it was \$845,216,654 net. Now, this shows a continually rising or increase in the net earnings, decidedly more than the increase in mileage, while the operating expenses have increased also, but the net earnings of these railroads have increased in such a way that I do not see how it can possibly impair their credit for any money that they borrow or ought to borrow.

Mr. LOVETT. Does your statement show, Judge Sims, how much the expenditures for betterments and additions were; that is, how much new capital was expended during that time?

Mr. SIMS. Not at all. I do not think that cuts any figure in net earnings unless you are going to use it for that purpose. It does not keep it from being net earnings; it is a profit.

Mr. LOVETT. But net earnings, as stated there, is the amount remaining without anything on the capital.

Mr. SIMS. Net revenue from railway operations.

Mr. LOVETT. Exactly; that excludes interest, dividends, and everything else.

Mr. SIMS. Excludes it?

Mr. LOVETT. Yes.

Mr. SIMS. You mean the interest is not paid; that the interest then must come out of these net earnings?

Mr. LOVETT. Of course I mean that.

Mr. SIMS. Then it still shows their net operating revenues are increasing?

Mr. LOVETT. Yes.

Mr. SIMS. Whatever is done with this revenue it shows that railway operation per se is profitable?

Mr. LOVETT. Yes. I say yes to that, although I do not—

Mr. SIMS. These figures indicate it. You will be held responsible for being accurate, and I will not, and ought not to be, because I do not know as much about it as you do. But what this table here shows is that the railroads are not being impoverished.

Mr. LOVETT. I have not seen your table, Judge Sims, but I take it to be a statement from the Interstate Commerce Commission of the net operating revenue for the years you mentioned?

Mr. SIMS. Gross and net both.

(The table referred to is here printed in full as follows:)

*Statement compiled from statistical reports of the Interstate Commerce Commission.*

Year ended June 30—	Average single track mileage represented. <sup>1</sup>	Railway operating revenues.	Railway operating expenses.	Net revenue from railway operations.
	<i>Miles.</i>			
1916 *	229,229.09	\$3,396,808,234	\$2,220,004,233	\$1,176,804,001
1915 *	256,213.61	2,956,193,202	2,068,682,956	887,510,246
1914 *	245,624.55	3,111,396,422	2,266,179,768	845,216,654
1913 *	242,657.12	3,193,117,834	2,235,922,626	957,195,208
1912 *	246,828.74	2,906,415,869	2,035,057,529	871,358,340
1911 *	243,433.61	2,852,854,721	1,976,331,364	876,522,857
1910 *	236,986.51	2,812,141,575	1,881,879,118	930,262,457
1909 *	232,981.11	2,473,205,301	1,650,034,304	823,171,097
1908 *	227,257.02	2,440,638,832	1,710,403,451	730,235,381
1907 *	227,454.83	2,589,105,578	1,748,515,414	840,589,764
1906 *	222,340.30	2,325,765,167	1,536,877,271	788,887,896

<sup>1</sup> These figures represent the mileage for which revenues and expenses are shown in this table and include some duplications of mileage operated jointly under trackage rights; also some mileage not in the United States.

\* From monthly reports of revenues and expenses of companies having annual operating revenues above \$1,000,000.

<sup>2</sup> Does not include returns for switching and terminal companies.

<sup>3</sup> Does not include returns for companies having annual operating revenues below \$100,000, and switching and terminal companies.

Mr. LOVETT. It means, in the sense used there in respect to net, the amount of money remaining after maintenance and operation and taxes, I presume. I do not know whether it includes taxes or not. And that amount is to be applied to the payment of interest and to the payment of dividends, and it takes no account of the amount expended on the road. Now, I have not the figures, but I fancy you will find, if you get full figures on the subject, that during the years you have mentioned new money was put into these properties faster than the net earnings increased, and of course the interest on this capital has to be paid out of the net earnings.

Mr. ADAMSON. I understand what you expend on betterments is a part of your earned expenditures, and comes out before the net earnings can be known.

Mr. LOVETT. No; net earnings, under the system of accounting the Interstate Commerce Commission prescribes, shows the amount that remains after paying operating expenses and maintenance, not interest or dividends or improvements.

Mr. ADAMSON. Of course, you can not operate without maintaining the road.

Mr. LOVETT. No. To illustrate: If we put an ice box in the end of a dining car, if we add a refrigerator, if we buy a new set of china for the dining car, if we put an electric light instead of an oil light, these are not treated either as expenses or as maintenance but as new capital, and we have to pay for it out of the net earnings or from borrowed capital. In other words, by this accounting the property, so far as any betterment or improvement or upbuilding is concerned,

is skinned down to the last dollar in order to show net earnings, and everything in the way of improvement has to be paid out of that amount, as well as interest.

Mr. ADAMSON. If I ask you to deduct from your entire gross earnings all that you expend regularly in operating, the net earnings are the sum remaining which you are at liberty to dispose of in paying interest, making betterments, or to divide among your stockholders?

Mr. LOVETT. Yes; but with the burden or obligation we can not escape of making certain improvements to the property that really are to keep it in operating condition.

You asked about the track expenses. For instance, suppose we lay down new rails and replace an 80-pound rail with a 90-pound rail. the difference between the value of the 80-pound rail and the 90-pound rail is new capital and is to come out of this. If we put down a—

Mr. HAMILTON. Why should not the whole cost of the 90-pound rail go in as new capital, inasmuch as you are making new track?

Mr. LOVETT. Of course, there are different theories about that. Prior to 1907 railroads had the option either to charge this excess to capital or to operating expenses, and different practices were followed. We adopted the practice of charging the entire amount to operating expenses. Some of the roads, whose credit was a matter of more concern to them, and who wanted to show larger net earnings, availed themselves of the option to charge operating expenses only with the weight to the extent of the rail they took up, and took care of the other out of their apparent net earnings.

Mr. SIMS. Judge Lovett, we are getting away from the proposition I am trying to develop, and that is this, that railway operation within itself was successful to these roads in those years, and those years covered all roads. That is, that net earnings are increasing while the railway operating revenues are increasing and the railway operating expenses are increasing. But the freight payer, the patron of the road, is interested more in the gross than in the net. The railways that made these net earnings might think it was to their private interest to invest the whole of it in improvements, because the property would be worth just that much more after it was done than before and therefore they have not lost anything. They may decide to invest only part of it and pay dividends of 4, 5, or 6 per cent and then let the balance of it go into the property, but the stockholder has lost nothing when he has the right to withdraw the whole amount of this if he wants to and he thinks it is to his interest to put it in the road instead of encumbering the road with a bond liability and interest; that is simply a matter for him to determine, and I can not see that the public has anything to do with his private funds, providing he does not trench upon the ability of the railroad to do the service. But I am trying to show that the railroads as a commercial proposition, as an operating plant, as a whole, are increasing both their gross and net earnings all the time, and out of all proportion to the increase in mileage.

Mr. LOVETT. Do you want me to answer the entire question, Judge Sims, or only the latter part of it? There are various assertions and assumptions in the question to which I can not assent.

Mr. SIMS. You may make just such answer as you wish.

Mr. LOVETT. So that I am understood as not assenting to it, I will undertake to answer not all of it, but only that part of it you wish me to answer. Just what is your question?

Mr. SIMS. My question is this, that this exhibit of mileage, of gross earnings, of operating expenses, and of net operating earnings, for the years I have given you, does it not demonstrate that the railroads as a whole, those included here, are doing a prosperous business? In other words, that they are not failing concerns and that there is nothing in this exhibit which would impair their credit?

Mr. LOVETT. I would answer that statement, Judge, distinctly no. Some railroads are prosperous, as I asserted in my main statement, and can live under the conditions and pay reasonable dividends. But if you take the period from 1907 to and including 1915, I would say that while in some of those years the railroads were prosperous, generally they were on a declining basis—that is to say, the new capital they invested to increase and improve their facilities was very much greater, or in a greater ratio, than the increase in their so-called applicable dividends on their capital. As you increase your fixed charges, and as you borrow more money to put into the property, unless your net earnings increase in the same proportion, you will soon get to the point where there will not be——

Mr. SIMS. Any net earnings at all.

Mr. LOVETT. Speaking of the railroads generally in the United States, the new money put into the roads increased much faster than the net earnings.

Mr. SIMS. I want to ask you, Mr. Lovett——

Mr. LOVETT. I suggest that you take the property investment account of the railroad companies during the years you mentioned, which shows the amounts of new capital which was put in, and compare the increases in capital with the increases in net earnings. For example, in my main statement I showed that during one of the years included in those you mentioned the additions to the capital by the railroads of the United States in a single year was one billion two hundred and some-odd millions. You will not find that rate of increase in the net earnings for any one year. So the railroads were in a position, generally, of pouring new money into the railroads and thereby increasing their interest charges or dividend requirements. That has gone on at a much more rapid rate than the increase in net earnings, which means they were on a declining basis.

Mr. SIMS. You refer frequently to dividend requirements.

Mr. LOVETT. Yes.

Mr. SIMS. You do not mean there is any legal dividend requirement or compulsory dividend requirement?

Mr. LOVETT. No; I mean there is a practical business requirement. Take the Union Pacific. It is established on a sound dividend basis. It commands a certain price because of the dividends it pays. It is held as an investment by many thousands of people.

Mr. SIMS. You mean the stocks?

Mr. LOVETT. Yes. People buy the stock expecting a return, and I naturally feel to these stockholders a moral obligation and that the moral obligation is as great as the legal obligation to the bondholders. If they put their money in on their faith of what they can reasonably expect us to do, and what we ought to do, there is a moral obligation on us to meet that expectation.

Mr. SIMS. Is there any moral obligation or legal obligation or anything else that ought to be binding on the public that persons who are entitled to dividends out of a public utility should be entitled to be paid semiannually or quarterly and in money?

Mr. LOVETT. I do not care whether it is a public utility or what it is. I consider that the man who has put his money into railroads is entitled to as much consideration as the man who puts it into a saloon or a corner lot or anything else. He has put his money in in the exercise of a right and at the earnest solicitation of the Government. The Government is solicitous about this matter. That is why this committee is sitting here, trying to provide the country with railroad facilities. I submit that a person who comes forward and puts his money into this great public purpose is as much entitled to a return as anyone else. I do not say that because he invests his money for a public use he is not subject to as great legal restrictions and regulation as anybody; but he, morally, is entitled to as much consideration as anyone.

Mr. SIMS. I am afraid you did not quite catch the question. Is there any moral or legal obligation to pay his dividends in money?

Mr. LOVETT. Yes; I consider there is a very strong moral obligation to pay the dividends to the stockholders of the Union Pacific.

Mr. SIMS. Annually or quarterly.

Mr. LOVETT. Yes.

Mr. SIMS. Is there not a greater moral obligation for you to earn them?

Mr. LOVETT. Yes.

Mr. SIMS. And suppose the Union Pacific has earned, net, 25 per cent, for instance, in one year.

Mr. LOVETT. Yes.

Mr. SIMS. And the directors, with the consent of the stockholders, think it is to their interest to invest that whole 25 per cent in the improvement of that property, and, when improved, that it is worth the amount of the dividend more than it was before. Have they not in morals and in fact received their dividends?

Mr. LOVETT. No; there are a great many people who live on what they get out of the dividends on the Union Pacific. We increased our dividends one-half of 1 per cent at the beginning of this year. I have a letter from a woman thanking me for the increase, and she said she owned one share. She is a working woman. A great many people look to this dividend for their income, and I believe that if the Union Pacific earned 25 per cent, and if it ought to spend that amount of money on some improvement, then it ought to pay the regular dividend and borrow the money needed. I think we should not force a loan from the stockholders when we can borrow it from those having it to lend.

Mr. SIMS. As a matter of policy, and all that, I understand your reasoning; but I asked you when they devote all their earnings, which they could devote to dividends, to a further improvement of the property, which they thought, in their judgment, was to the best interests of the owners—the stockholders—if they have not, in fact, received their dividends, not in money, but in property, in an added value to their stock?

Mr. LOVETT. I have just said that a great deal we might legally pay out as dividends is put back into the property for improvements which neither increase the revenues nor reduce the expenses.

Mr. SIMS. It adds to the value of the property. Your stocks reflect it in the market immediately.

Mr. LOVETT. I had not observed that.

Mr. SIMS. You know, perhaps, of Mr. A. J. County, do you not?

Mr. LOVETT. Yes.

Mr. SIMS. I am not going to again get caught up by quoting anybody to you without first asking your opinion of him.

Mr. LOVETT. I think you have not quoted anyone yet, with whom I—

Mr. SIMS. This gentleman has stated in this pamphlet—he is vice president of the Pennsylvania Railroad Co. and in charge of accounting. Now, I notice, nearly all of these addresses, delivered everywhere, in favor of this legislation, or something on the order of it, are in the main in agreement, which is all right. All of these wise men and all of these practical men may take the same view; but, summarized, Mr. County says:

They have, in my judgment, three barriers to cross that will require the most impartial statesmanship and the best administrative experience.

First, they must get larger earnings—

That is the first and all-important proposition, so far as the railroads are concerned. He states some reasons why, but I am stating the requirements—

First, they must get larger earnings.

Second, they must find a means whereby neither the companies nor their employees can stop the transportation service of the country.

Third, means must be found to remove the obstacle of confusing and conflicting laws and regulations of the various States and the Federal Government.

Now, the first—and I take it it is the most important, because he mentions it first—is the increase of earnings.

Mr. ADAMSON. Is not that a common complaint; not confined to the railroads? Everybody wants larger earnings.

Mr. SIMS. He says it is necessary. Does this mean or does he mean or you mean that you have got to charge more for performing the same service?

Mr. LOVETT. I should say that I indorse all Mr. County says, except as to the increase of earnings. There are certain qualifications to that. Many of the roads—I should say a very large majority of the railroads of the United States—must have increased earnings. When you increase by the eight-hour law, for instance, the expenses of a large class of men 20 or 25 per cent, and when the price of coal, which, outside of labor, is the largest single item in railroad transportation costs, practically doubles; when the cost of engines and other rolling stock almost double; when the price of rails is jumped from \$30 to \$40 a ton and the cost of everything entering into the maintenance and operation of railroads is almost doubled; when track labor jumps from \$1.25 to \$2.50 a day, as much of it has, it is perfectly obvious that as the railroads have no means except rates by which to get revenue to pay the increased bills they must have increased rates or go into bankruptcy.

Mr. ADAMSON. I agree with you in all of your answer except as to the statement of your additional expenses in connection with the eight-hour law. That depends on how anxious you are to comply with the eight-hour law. If you comply with the spirit of the law, it will not cost you much.

Mr. LOVETT. I hope you are right. We will comply with the letter and the spirit of the law.

Mr. ADAMSON. If it does cost you much more, we will secure, through the Interstate Commerce Commission, fair and just rates, according to your circumstances.

Mr. LOVETT. I hope so.

Mr. SIMS. If I catch the meaning of your reply, you admit or claim, as Mr. County says—

Mr. LOVETT. I do not like the word "admit."

Mr. SIMS. Well, "contend." You contend that on account of the facts you have just mentioned the railroads must have larger earnings. I suppose you mean net earnings?

Mr. LOVETT. Naturally.

Mr. SIMS. The question I asked you was, do you mean larger earnings by reason of an increased charge for the services you now perform?

Mr. LOVETT. I do not know of any other way to get it.

Mr. SIMS. I understand that is what you mean; but I wanted to know if I understood it correctly.

Mr. LOVETT. Yes.

Mr. SIMS. Therefore the additional earnings become a loss to the patrons of the roads; that is, if the freight and passenger rates and other charges for services performed are increased?

Mr. LOVETT. I think a man who increases the price of his coal from \$1 a ton to \$2 or \$2.50 and jumps the price of rails from \$30 a ton to \$40 a ton and still makes over 40 per cent profit—

Mr. SIMS. You think he can afford to pay some additional freight?

Mr. LOVETT. Yes; I think he ought to let us have a little.

Mr. SIMS. I think so, too. We might just as well admit the fact that as a whole the people pay the gross earnings, that as a whole every increase in freight charges is a burden upon the individuals or the business which pays it.

Mr. LOVETT. I would not call it a burden any more than food is a burden.

Mr. SIMS. It is an additional expense to them, is it not? If freight charges are increased, is not that an increase in the expense of doing the business?

Mr. LOVETT. Yes.

Mr. SIMS. And bound to be?

Mr. LOVETT. Yes.

Mr. SIMS. Therefore this is transferring or taking from the railroads a loss and transferring it to those—

Mr. LOVETT. You call that an expense, Judge Sims, but this man is doubling his profits, and in the process of doubling profits he simply pays a little more than he formerly paid for conducting the business; and that is why I hesitate to call it an expense.

Mr. SIMS. I am talking about all those who patronize the railroads.

Mr. LOVETT. I would like to say that this condition, Mr. County describes as to the needs of the railroads for increased rates will have nothing to do with Federal incorporation. It will have to come, regardless of the corporate system.

Mr. SIMS. I understand he is mentioning it in line with the railroads keeping up their present standards and continuing in business.

Mr. LOVETT. Yes.

Mr. SIMS. The next proposition is—

Second. They must find a means whereby neither the companies nor their employees can stop the transportation service of the country.

Mr. LOVETT. I consider that one of the most vital necessities in the railroad situation, not perhaps so much to the railroads as to the public at large.

Mr. SIMS. Don't you think this part of it is unnecessary—that neither the companies nor the employees can stop the transportation service? Have the companies ever tried to stop it?

Mr. LOVETT. I think the companies have been unable—

Mr. SIMS. But this would indicate an intentional effort.

Mr. LOVETT. Well—

Mr. SIMS. I think it is unnecessary to put that in. I think the policy of the railroads is always to continue furnishing the service.

Mr. LOVETT. When you come to analyze statements you will find that there is always something stated that is not necessary.

Mr. SIMS. I suppose it is put in to balance up and make them equal.

Now, we come to the labor cost, which we may consider very important, whether or not it is going to increase or decrease, and what effect it will have upon your future earnings—what effect the uncertainty of the labor cost have upon the credit of the railroads—I think it is a very germane consideration. Now, I read to you; no doubt you have read it, but I will put this in the hearings. This I am reading from is a statement entitled "Economic conditions—Governmental finance—United States securities," New York, March, 1917, by the National City Bank. Referring to the recent immigration law—the effects of it—passed by Congress over the veto of the President, this publication says:

It remains to be seen how serious a bar the literacy test will prove to be. This country has been developed largely by immigrant labor. Its common labor now is largely of the immigrant class, and unless there is a sufficient supply of such labor to enable our industries to expand there will be fewer opportunities for all our people. There can not be employment for more clerks, mechanics, craftsmen, tradesmen, or professional men unless there are also more laborers. There can not be an expansion of railway service without more track hands and laborers as well as trainmen and office employees.

That is a general statement. Do you not think that this is about correct?

Mr. LOVETT. Why, no objection occurs to me at the moment.

Mr. SIMS. That it is a fact, so far as we know? I am not disputing it. I am only referring to it as a fact.

Mr. LOVETT. I am not an expert on economics, but I think that is all right. It sounds all right.

Mr. SIMS. This publication indicates strongly that railway labor in the future, especially, will be affected by the shutting off of a part of the supply they have heretofore had, for common labor.

Mr. HAMILTON. May I interrupt you for a second?

Mr. SIMS. Certainly.

Mr. HAMILTON. It is very obvious, Mr. Chairman, that Mr. Sims, with his very interesting examination, will probably run out the whole time, and I wanted to say, so far as I am concerned, it will not be necessary to ask Judge Lovett to return, because I would have only a few questions anyway.

Mr. ADAMSON. Senator Townsend will probably want to ask some questions. If it is convenient for the judge to remain until to-morrow, perhaps Senator Townsend will want to ask some questions.

Mr. HAMILTON. I thought perhaps you had some engagement or something like that. Certainly I would not want you recalled for the few questions I have.

Mr. LOVETT. I thank you. If the committee will have a session to-morrow, I should prefer to remain, so that Mr. Hamilton can ask his questions.

Mr. HAMILTON. Senator Townsend may desire to submit several questions.

Mr. ADAMSON. Mr. Hamilton is capable of asking some very entangling questions himself, when he gets down to business.

Mr. HAMILTON. I thank the chairman for his compliment.

Mr. SIMS. I want it understood that I have no purpose, much less thought, of asking Judge Lovett any entangling questions. It seems to me these questions are important.

Mr. LOVETT. I am not at all impatient.

Mr. SIMS. I am glad you are not. I want to do my part, and then it will be poorly enough done.

Mr. LOVETT. I think not.

Mr. SIMS. Well, at any rate, it looks like the tendency of the times is to increase the cost of labor. Do you not think that it true, generally?

Mr. LOVETT. Yes.

Mr. SIMS. This is along that line, and, consequently, you will have to pay more for labor in the future than in the past.

Mr. LOVETT. I do not object to it at all. One thing I am sure of, so far as the railroads are concerned, the people who use the railroads must pay the bill. You can not get away from that. Whatever the Government chooses to do about this matter, the railroads must adjust themselves to.

Mr. SIMS. I was going to ask more about the labor, but I will leave that out, because it will come in better later on. I just happened to see that article of Mr. County's and referred to it.

Is it not a fact that the demands of the railroads are on the increase, regarding proper and necessary terminal facilities?

Mr. LOVETT. Undoubtedly. We need more terminals.

Mr. SIMS. Here is an article written by Robert J. McFall, Ph. D., University of Minnesota, in which he quotes from a publication, Droege, which stated in 1912, in Freight Terminals and Trains—I suppose that is the publication. I have never seen it.

Mr. LOVETT. I never heard of it before.

Mr. SIMS. Here is the quotation:

The terminals alone represent a greater amount of money than all the remainder of the properties of the roads. This statement is true even when smaller or intermediate stations are omitted and only the great water terminals and general intermediate distributing centers, known as division terminals or yards, are included.

Mr. LOVETT. That is true of some companies, and of some it is not. If you are speaking of the whole United States, I have no information on that, although I am rather surprised.

Mr. SIMS. I am including the whole United States.

Mr. ADAMSON. You would include the whole yard in your terminal?

Mr. LOVETT. Yes. I understand that he is including terminals, strictly speaking. At all events I am not prepared to dispute his statement.

Mr. SIMS. You do not know whether the requirements of the railroads are greater now for terminals—the investment for terminals is greater than the investment in the other property?

Mr. LOVETT. I do not. I know it is very great.

Mr. SIMS. Mr. Stuyvesant Fish, who used to be president of the Illinois Central Railroad Company in 1906, when the hearings were had before the Interstate Commerce Committee with reference to the Hepburn law, made a private statement to me—and I do not like to quote a private statement—but he said that if he were going to divide up the property of the Illinois Central between the terminals and the rest of the property, that he would take the terminals.

Mr. LOVETT. The Illinois Central has very expensive terminals on the lake front in Chicago.

Mr. SIMS. I see it alleged that the unit cost of freight and passenger service is on the increase, taken as a whole.

Mr. LOVETT. True; necessarily, when you increase wages, the cost of fuel, the cost of every element that enters into the maintenance and operation of railroads, including labor, the unit cost will increase.

Mr. SIMS. It will unless the volume is so much greater that the railroads get their earnings with less cost. That being the case, Judge Lovett, it being unquestioned that there are vast sums of money going into these large terminals, such as New York and others like it, Chicago—that the railroads are being burdened with an additional capital requirement in excess of like capital requirements in the past—

Mr. LOVETT. I stated the other day that the capital requirements of the railroads never ceased, and I ventured the opinion that in the next 10 years the railroads will have to spend at least as much as in the last 10 years.

Mr. ADAMSON. If it is convenient, I would like to suspend the examination here.

Mr. SIMS. I was going to speak next of the new New York terminal and ask what it cost.

Mr. ADAMSON. Mr. Thom stated, in connection with some questions asked of Mr. Lovett, he had some figures to put in the record.

Mr. THOM. Mr. Chairman and gentlemen, Judge Sims in his questions, read a lot of net returns from the list of selected roads.

Mr. SIMS. I did not select them.

Mr. THOM. You must have selected them, as you took them from some publication.

Mr. SIMS. They were printed in some publication. I mean I did not pick them out.

Mr. THOM. In connection with those, I want to read a few figures. The net income for return on stock—the gross amount of stock of all railroads—for the year ending 1913, was 5.94 per cent; for the year

ending 1914, it was 4.06 per cent; for the year ending 1915, it was 3.44 per cent; that is, when I say "the year ending," those dates were for the year ending June 30 of those years.

Taking 21 selected roads, the annual average net income for return on gross amount of stocks was, for the series of years from 1911 to 1915, 8.65 per cent; for all other roads than those 21 it was 2.64 per cent a year.

Each year there has been put into the companies a vast amount of additional capital. The earnings on this additional capital amounted, in 1911, to 2.02 per cent; for 1912, to 1.14 per cent; for 1913, to 3.47 per cent; and in 1914 there was a loss of 0.76 per cent; for 1915 they earned only 0.05 per cent.

Mr. SIMS. That is on the capital stock?

Mr. THOM. No, sir; on the additional new money.

Mr. ADAMSON. The time for adjournment has come. You may print the rest of your statement in the record if you so desire, Mr. Thom.

(Thereupon, at 1.30 o'clock p. m., the committee adjourned until to-morrow, Friday, March 24, 1917, at 10.30 a. m.)

# INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT CONTROL AND REGULATION.

SATURDAY, MARCH 24, 1917.

UNITED STATES SENATE,  
JOINT SUBCOMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The joint subcommittee met at 10.30 o'clock a. m., Hon. William C. Adamson (vice chairman) presiding.

Mr. ADAMSON. Judge Sims, you may proceed.

## STATEMENT OF MR. R. S. LOVETT—Continued

Mr. LOVETT. I was requested on the first day of the hearing to submit a map showing in some distinctive manner the different units constituting the Union Pacific system. I have such map (p. 826) and now submit it, as follows:

Mr. SIMS. Mr. Lovett, I told you yesterday that I would want to ask you some questions this morning regarding railway terminals and the cost to the railroads having to provide such terminals. Have you anything like a definite idea of what the cost of terminal facilities is, or what per cent of the total cost of railroad facilities is embraced in what is called "terminal facilities"? Let that be sidings or stations or docks or whatever is usually meant when you say "terminal facilities."

Mr. LOVETT. I have not, Judge Sims. It is a very large part of the cost of railroad facilities, and I believe that future expenditures will be relatively larger for terminals, using that term in the general sense that you have just stated, than almost any other part of railroad development, but I do not know the proportion.

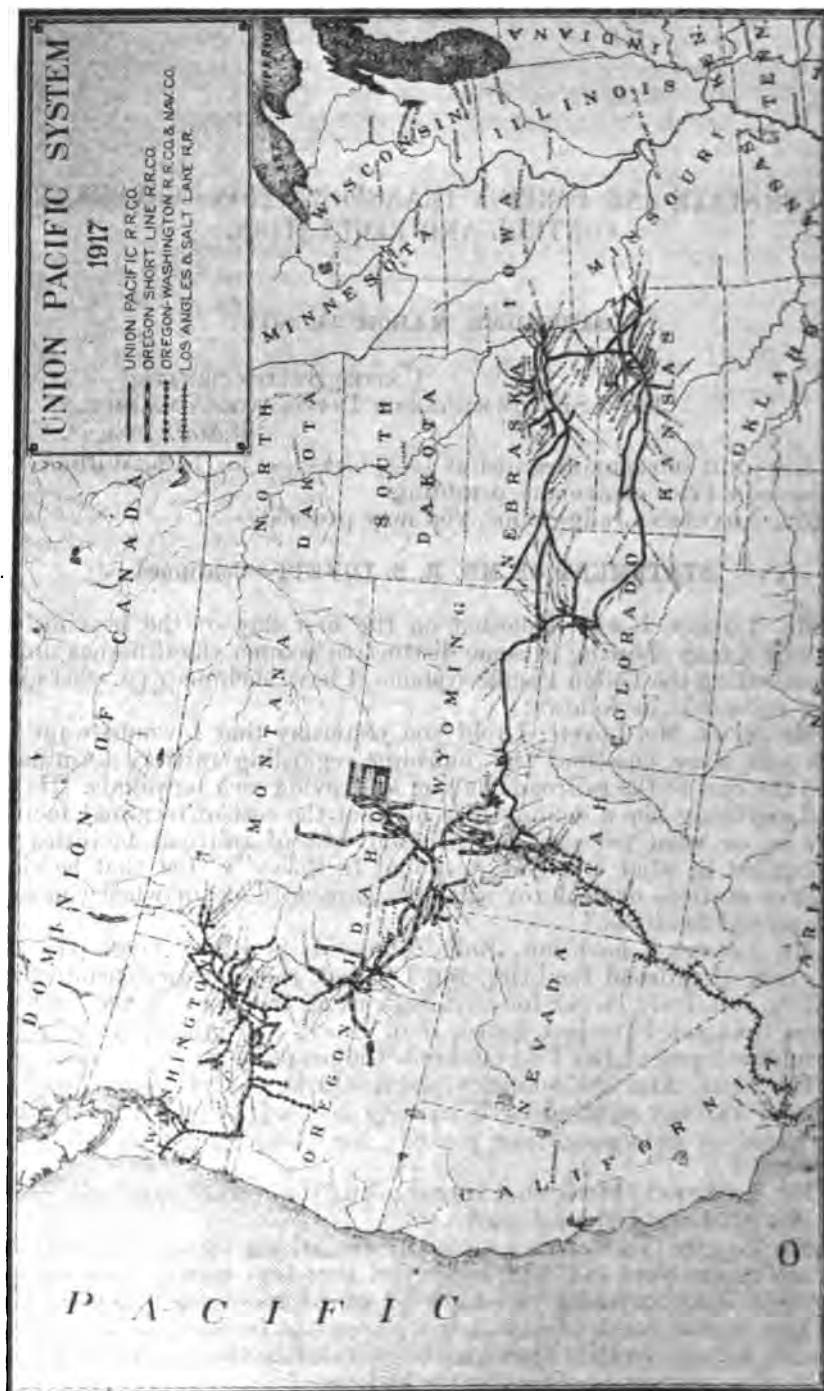
Mr. SIMS. And the tendency, then, will be that a larger proportion of railway earnings will have to be used in providing future terminals or enlarging those you now have than has heretofore been the case?

Mr. LOVETT. I believe that is true, using the word "terminals"—

Mr. SIMS. In a general way.

Mr. LOVETT. To include practically everything except main tracks.

Mr. SIMS. Now, is it also not a fact that that increase can not be prevented by anything or any kind of economic operation of the railroads that can be devised; that it can not be prevented, in other words, by any method that may be adopted in the way of administrative or economic policies by the railroads?



Mr. LOVETT. No; I do not know of any way of avoiding it. The only way that it will be prevented, of course, will be lack of money.

Mr. SIMS. I want to ask you another question in connection with that. Do you or not think it would be a wise policy to adopt, on the part of the railroads, to make a specific special terminal charge for all traffic that has the benefit of a particular terminal—the direct benefit—or passengers, in addition to the general line-haul charge, to be paid exclusively by those who receive the direct benefit from a specific terminal?

Mr. LOVETT. I believe the present method of dealing with that item of cost or expense in transportation is best. It is not the same in all cases; it is adapted to the needs of the particular situation, and is based on experience of the roads in dealing with the subject, and I do not know of any method of improving it. If there were any, I believe the railroads would find it out.

Mr. SIMS. The present method, as I understand it, is to have a terminal company organized—in other words, the terminal is operated by a separate corporation, the stock of which may be owned by one railroad or any number of railroads, or by anybody that may want to take the stock, and the railroads using the terminal pay such charge for its use as is determined by the terminal company. Is that, in substance, the way it is done now?

Mr. LOVETT. There are many terminals that are handled in that way, but there are a great many handled in other ways. There is a great variety of methods.

Mr. SIMS. I am not familiar with the methods used, and, as you said, “present methods,” I only wanted to know what they were, without going into lengthy details.

Mr. LOVETT. I meant that the present methods vary, that the arrangement for handling the expense is adjusted or applied to each particular situation, and there is no hard-and-fast rule for conducting terminals. There is a great variety of methods, and I think that each case is based upon the experience of railroad companies in dealing with the question.

Mr. SIMS. Are the terminal costs—I mean the New York terminal costs—in any way a charge upon the traffic, passenger or freight, of any railroad companies which do not either initiate from one of these terminals or in any way receive a specific benefit from such terminal service?

Mr. LOVETT. You speak now of the New York Central Terminal?

Mr. SIMS. I referred to the New York Central and the Pennsylvania, because they are the only terminals on Manhattan Island, N. Y., that I know of.

Mr. LOVETT. Yes.

Mr. SIMS. I do not believe there are any others.

Mr. LOVETT. No.

Mr. SIMS. And because they are very expensive terminals.

Mr. LOVETT. Yes; they are. Without going into all of the detail or the history of those matters—

Mr. SIMS. I care nothing about that; I just want to know what the effect of it is on the business not emanating in New York or going to New York.

Mr. LOVETT. A terminal, Judge Sims, answering your question in a general way, is merely a facility, and is part of the general plant, and it enters into the general capital requirements, and the general expenses of the railroad company. Now, rates—I am dealing with the two terminals that you spoke of, which are passenger terminals; not freight.

Mr. SIMS. Yes; I know. But they illustrate what I am trying to get at.

Mr. LOVETT. Yes. The passenger pays a certain rate. He is not concerned with the terminal, and the expense of carrying that terminal is a part of the general expense of the company, just like some intermediate bridge, the track, or anything else. It is part of the expense, and it does not figure separately in the passenger rate. I do not know how the railroads deal with that terminal in their accounts, except that, in the case of the New York Central Terminal, the New Haven, which is the tenant, pays a fixed rental of so much, regardless of the amount of business it does, which is very much less than one-half of the capital on the cost of the terminal. Then the expenses are apportioned on the basis of use. There is a certain amount required to carry that terminal, or to maintain and operate the terminal, and that is apportioned between the various companies that use it, on the number of cars they handle in and out of the terminal. That, however, is not fairly illustrative of the general terminal situation. In many cases there is an allowance—several cents a hundred or so much per ton—on all the freight that goes in and out of the terminal, for the terminal charge. But that is merely a matter of dividing the through rate.

Mr. ADAMSON. That terminal charge would go into the general fund?

Mr. LOVETT. Yes; that goes into the general fund. For instance, the Southern Pacific owns the terminals at San Francisco, and it being a very large expense and an apportionment of the through rate on a strict mileage basis being unfair to the Southern Pacific, as it includes that terminal, the Southern Pacific gets an allowance of so many cents a hundred out of the aggregate through rate on all traffic to and from San Francisco going into those terminals. Now, the shipper has nothing to do with that. The through rate is so much, and he is not concerned, as the Interstate Commerce Commission has said many times, with how that through rate is divided among the carriers. Take the Union Pacific: For our Missouri River Bridge and other terminals in Omaha the Union Pacific, out of transcontinental rates by its connecting lines, is allowed a certain amount in addition to its ordinary mileage division of the through rate to cover this terminal charge. The shipper is wholly unconcerned with that. He has nothing to do with the division of this through rate. It is a matter of trading between the connecting lines in apportioning among themselves the aggregate rate. Does that answer your question?

Mr. SIMS. It is information; that is what I am after. These two terminals in New York, which you have referred to, you have designated as "passenger terminals." Now, is there any increase upon the passenger tariff of these two companies in addition to the passenger tariff on any other company not using these terminals? I mean, as

compared with any other city they serve, in order to provide for this extraordinary passenger facility in New York?

Mr. LOVETT. No.

Mr. SIMS. None whatever?

Mr. LOVETT. I never heard of a passenger rate or a freight rate being raised beyond what it was formerly by reason of the addition of new terminals. That is one of the burdens a railroad company must bear in providing additional facilities.

Mr. SIMS. The burden, then, in New York of these two terminals is a burden upon the resources of the railroad companies in common?

Mr. LOVETT. Yes.

Mr. SIMS. On all their earnings—freight and passenger?

Mr. LOVETT. Yes; I should say so.

Mr. SIMS. But it is exclusively a passenger facility or benefit?

Mr. LOVETT. Yes.

Mr. SIMS. Do these two railroad companies make more money out of the passenger business by reason of these excessive terminal facilities—I mean excessive in the way of price or cost—than they would if they had less costly terminals?

Mr. LOVETT. Why, the hope of greater revenue and competition and the requirements of the public force these things. I do not know the motive of the passenger terminals in New York originally, but I think the purpose is rather apparent on the surface. The Pennsylvania Co., being a very progressive railroad company, felt that it ought to get into the city of New York. I have no information; I am just giving you my assumption.

Mr. SIMS. Surmising?

Mr. LOVETT. Yes. It was a very large expenditure. For the West, where it was in competition with the New York Central, it was at a disadvantage, because passengers going west, if going over the Pennsylvania, would have to go down town to Twenty-third Street, or farther down town, and take the ferry to Jersey City, and then take the train in Jersey City. It was an expedition that would take anywhere from half an hour to an hour or more; whereas they could go right to the Grand Central Terminal, go right into the car, and they were settled then for their western trip. I fancy that the Pennsylvania considered that they were at considerable of a disadvantage, and thereupon they determined to get into or onto Manhattan Island with a terminal. I am quite sure they were also actuated by a progressive spirit. The old terminals in Jersey City were really not up to what a first-class railroad ought to have in a great city. That actuated them. Now, the Pennsylvania having done that, and the New York Central being compelled by the growth and development of the passenger business, both of the New Haven and the New York Central, and the general growth of the city, and being under criticism for the antiquated method of handling the terminal in such a city, with steam engines in a tunnel, found it necessary, under pressure of public opinion, to build a new terminal and adopt electricity as a motive power. The Pennsylvania having made this expenditure and seeking advantage, the New York Central, in a progressive and competitive spirit, provided a very handsome and a very great terminal at a very large expense. That, I

should say, about explains the conditions that brought about the establishment of those terminals.

Mr. SIMS. And such additional expense as is added to these railroads makes them less able to reduce freight rates, does it not?

Mr. LOVETT. The cost of these terminals was an additional burden, a fixed charge upon the Pennsylvania Railroad and the New York Central, and it is a part of their general needs; but I would not say that it made them less able to provide freight facilities or to reduce freight charges, because nobody can measure the value of improvements of that character. The prominence, the great advertising effect of this new Pennsylvania terminal, I have no sort of doubt, enormously increased their freight revenue, and when the New York Central met it it increased its revenue.

Mr. SIMS. Although neither of those terminals is in any way used for freight traffic or is any money benefit to freight traffic?

Mr. LOVETT. Yes. In the case of the Union Pacific we run a number of transcontinental trains, and while I do not think we run any of them at a loss, some of them are not particularly profitable; but for us to abandon those trains would be a step backward that I am sure would hurt us a great deal in other directions.

Mr. SIMS. You spoke of the competition existing between the New York Central and the Pennsylvania on Manhattan Island regarding the passenger terminals, and of one having built a terminal, and that it did not confine its cost strictly to utilitarian purposes; that it then became almost necessary, as a protective measure, for the New York Central to make a like expenditure for the same purpose?

Mr. LOVETT. Yes.

Mr. SIMS. Consequently there is a burden put upon all the users of that railroad—the freight payers and the passenger payers, whether they ever go inside of those terminals or not—made necessary by existing competition between two great railroad companies or railroad systems that enter the same city.

Mr. LOVETT. I do not call it a "burden," Judge Sims.

Mr. SIMS. Well, it is certainly a financial burden.

Mr. LOVETT. And a financial benefit.

Mr. SIMS. You have got to have more earnings, and you do not get them out of the passenger stations; you charge nothing additional for a passenger coming into that station. If I go to New York and get off in Jersey City, on this side, I have to pay as much as if I had bought a ticket to the Pennsylvania Central Station. Consequently there is no additional revenue, so far as passengers are concerned, that is derived from these two terminals, unless by reason of having these finer terminals a greater number of passengers go to New York over your lines, or over those two lines, than would otherwise go. Therefore there is a greater profit in carrying passengers.

Mr. LOVETT. I believe that is true.

Mr. SIMS. Then, it should not become a burden upon the freight traffic of these two roads?

Mr. THOM. You said, Mr. Lovett, "I believe that is true"—

Mr. SIMS. I have reference to the increase in passenger business.

Mr. LOVETT. I believe there is an increase in passenger business by reason of those two terminals.

Mr. SIMS. We now have systems of railroads, and they are competing. In a general way, does not competition affect a system the same as it does two single railroads that are competing in the same cities for the same service, both good and bad? Does that have the same effect?

Mr. LOVETT. Are you distinguishing between a system of railroads and particular railroads?

Mr. SIMS. Take the New York Central Lines, or your lines; that is what I mean when I say a "system."

Mr. LOVETT. Yes.

Mr. SIMS. The railroads under one ownership and control?

Mr. LOVETT. Yes.

Mr. SIMS. They compete with other railroads under one ownership and control?

Mr. LOVETT. Yes.

Mr. SIMS. You have called them systems, I believe, in speaking of them.

Mr. LOVETT. Yes; that is what I meant.

Mr. SIMS. These systems, therefore, give the passengers a better service by reason of the two railroads competing with each other in the matter of terminals in New York City?

Mr. LOVETT. Yes.

Mr. SIMS. But while the passengers get a better service for their money than they did before, yet your earnings, your revenue, must be collected from the entire service of the railways in order to maintain these tremendously expensive terminals; therefore it is not a benefit in that way to have these extraordinarily costly terminals, and in that way competition has produced, you might say, an evil; and, furthermore, you have just stated that you think both of those railroads carry more passengers to New York City by reason of those terminals than they otherwise would, and I think so, too; it is common sense that they would. If I can go from here to the Pennsylvania Station on Manhattan Island for the same fare that I would have to pay if I got off at Jersey City, of course I will choose the former; but while that is true, the road that has not the benefit of such a terminal will lose all the passengers that the other roads gain. Now, is not that true?

Mr. LOVETT. It will certainly lose some; it will suffer some.

Mr. SIMS. It will lose to the extent of the gain of the other roads?

Mr. LOVETT. The other road may gain passengers from other lines.

Mr. SIMS. I mean, that for this particular and specific reason these two companies, I am confident, get a large passenger traffic that they would not get except for the reason of these terminals.

Mr. LOVETT. I am sure of that.

Mr. SIMS. And those passengers are persons who would otherwise go on some other road?

Mr. LOVETT. Undoubtedly.

Mr. SIMS. And, therefore, this competition takes from the weaker roads some of their traffic—those which can not avail themselves of these fine terminal facilities?

Mr. LOVETT. Yes.

Mr. SIMS. Therefore competition is war.

Mr. LOVETT. Yes.

Mr. SIMS. And it may be a peaceable war, as in this case—two great railroads trying to equal the facilities of each other?

Mr. LOVETT. Yes.

Mr. SIMS. But to the disadvantage of the weaker roads, which are not able to maintain such fine terminal facilities.

Mr. LOVETT. Yes.

Mr. SIMS. I believe that the railroad companies of this country have what they call "basing points." I suppose New York City is a basing point, is it not?

Mr. LOVETT. I am not familiar with the details of rate matters, Judge Sims. I can not tell you very much of them.

Mr. SIMS. I thought, next to Mr. Thom, you were the most super-expert we have on this subject, and I have asked you all kinds of questions, supposing that you knew in a general way about all of them.

Mr. LOVETT. You flatter me greatly. I do not know about all of it.

Mr. SIMS. That was my understanding.

Mr. LOVETT. I know something, in a general way, about traffic matters, but when you ask me about particular basing points I can not tell you, Judge.

Mr. SIMS. We had quite a contention between the railroads basing on the Ohio River, running through Nashville, Tenn., to Atlanta, Ga., and the Nashville milling people have what they call milling in transit—if that is what it is called?

Mr. THOM. Milling in transit?

Mr. SIMS. Yes; milling in transit. Now, it was claimed that from these basing points on the Ohio River wheat would be shipped as wheat to Atlanta, as though it was going direct to Atlanta, and the through rate was charged, say, from Louisville to Atlanta, but giving the privilege for the wheat to stop off in Nashville and stay there six months, and then give a flour rate or a rate on the manufactured product of this wheat to Atlanta that was equal to the rate from or not exceeding the rate from Louisville to Atlanta in the first instance; but in shipping from Nashville to Atlanta—not to Atlanta, but to some point nearer to Nashville than Atlanta—

Mr. ADAMSON. Intermediate point.

Mr. SIMS. Well, one nearer Nashville than Atlanta, that Atlanta being the basing point the charge was made from Nashville on the flour to Atlanta, adding the local rate from Atlanta to this point to which the flour was actually going; and, as a matter of course, that cost Nashville flour people that much more money than it would by receiving the benefit of the milling-in-transit rate.

Now, I understand that a basing point, operated in that way, imposes upon every town or shipper or consumer within that basing radius the same rates plus the rate from the basing point to an intermediate point, although that intermediate point may be on the line over which the property would go if it went to Atlanta. Now, that is my idea of the practical effect of fixing a basing point. Is that, in a general way, correct? I do not know. I am asking for information.

Mr. LOVETT. I am not traffic man enough to answer as to whether you would call that a basing rate or not. I know that there are

certain basing points that are used as a means of arriving at a rate to some other point.

That is simply part of the argument—part of the reasons for arriving at it—but I am not sufficiently familiar with the rate structure of the country to give you any information really as to the details of rates or rate making, or rates from different basing points.

Mr. SIMS. Let me state a concrete case, then, that will illustrate it. If you do not know, of course you can not answer.

Mr. THOM. There will be certain rate men on the witness stand from the various rate territories of the country and you will have an opportunity of learning these things from them.

Mr. SIMS. I suppose they are special experts on that?

Mr. THOM. Sir?

Mr. SIMS. I suppose they are special experts on rate matters, but I should think that this committee of railroad executives would be experts on all of them; perhaps not the details, but in a general way.

Mr. LOVETT. I have been in litigation involving rate matters. I have had a great deal of experience in the principles of rate making, but I have never had occasion to deal with concrete rates from any particular place, and how any particular rate is made, except the rates involved in that particular litigation. I know, in a general way, the principles of rate making.

Mr. SIMS. That is exactly what I wanted to ask you about.

Mr. LOVETT. But I would not undertake to deal with any concrete rate problem, because the conditions change and we can not discuss the merits of a rate unless we know all of the circumstances that enter into its making.

Mr. SIMS. I am talking about the general rule that is adopted in rate making by railroads, with reference to what they call "basing points."

Now, suppose freight is leaving Louisville, Ky., and going in or out—I do not care what—to Atlanta, Ga.

Mr. ADAMSON. Judge Sims, I believe Mr. Thom will tell you that under the recent adjustment of the short-and-long-haul clause the commission has either done away with basing points or greatly modified them.

Mr. THOM. Greatly modified them.

Mr. LOVETT. I would prefer, Judge Sims—of course, I will undertake to answer your question—

Mr. SIMS. I will be frank with you on that question. I want to get this in regarding terminals; that is why I am laying this foundation.

Mr. LOVETT. Of course, we will send traffic men here who will answer any of these questions.

Mr. ADAMSON. It is dangerous to fool with them; I think we had better take our chances with you.

Mr. SIMS. My experience with experts, without any discredit to them, has always been that they know exactly how to tell what they want to tell and exactly how to keep a layman from finding out what he wants to and does not know how.

Mr. LOVETT. I will do my best.

Mr. SIMS. But you are general, and therefore I am considering you good on all of them, and not an expert on dodging, because I do not think you show any attempt to do anything in that line. But here is a manufacturing company at Louisville, Ky., manufacturing material. It gets a through rate to Atlanta. Now, on the same railroad, 50 miles nearer Louisville than Atlanta, we will say, there is a manufacturing concern that uses that material brought from Louisville. I am only taking it for granted that there is a freight terminal in Atlanta similar to that in New York, a great, expensive freight terminal in the city of Atlanta. I understand, in effect, and in operation to-day, that the railroad company will charge freight on this manufacturing material which is unloaded 50 miles nearer Louisville than Atlanta the full rate from Louisville to Atlanta plus the rate from Atlanta back to the manufacturing point, 50 miles. Now, in that rate, the freight not going to Atlanta, stopping as it went on, never having gone inside of the Atlanta terminal—it does not need the Atlanta terminal, does not use it directly or indirectly—do you think it is commercially just and fair that a terminal charge, or a portion of it, or any part of it, or an interest charge on terminal bonds should be placed upon this man outside of Atlanta, who has a shorter haul, to that extent becoming a burden upon his products? I am speaking about the policy, the principle involved in such a practice, if such a practice exists.

Mr. LOVETT. I think that depends upon the circumstances of the case. Perhaps I can answer your question better by telling of an immemorial practice in making rates to the Pacific coast. Whether that is still in force I am not prepared to say. But we will take Reno, Nev. The rate from New York to Reno, Nev., was formerly, and, so far as I know, is still, made by taking the rate from New York to San Francisco, the transcontinental rate, and adding to that the local rate of the Southern Pacific from San Francisco back to Reno. The carload of freight will move overland to Reno and stop there, never going to San Francisco, but the shipper pays exactly what it would cost him if that car of freight had gone to San Francisco and been hauled back. The Reno man, on a superficial examination, will say, "That is not fair; this car does not go to San Francisco; the Southern Pacific ought not to be paid for hauling this freight to San Francisco and back to Reno when it hauls it only to Reno." And upon the face of it, it looks as if he were right. Now, the Southern Pacific's answer to that is that the rate from New York to Reno overland really ought to be higher than this combination makes it; that considering the whole traffic of the railroad, the fixed charges, and all the obligations, and to afford a fair return upon the property, the rate from New York to Reno ought to be higher than the aggregate of these two sums. We will say that the aggregate of the rate from New York to San Francisco is a dollar a hundred and the rate from San Francisco back to Reno is 50 cents, making the Reno rate \$1.50. The Southern Pacific will say, as a matter of fact, and in justice to the railroads, the rate from New York to Reno ought to be \$2 a hundred, but it has to make the rate \$1 a hundred to San Francisco to meet water competition. That is all it can get out of the San Francisco rate, for if it

should charge the Reno man \$2, what he ought to pay, he could send it by water to San Francisco and pay the local rate to Reno and get the freight at \$1.50. Therefore it charges the \$1.50, which is all it can get.

Mr. ADAMSON. Then, in effect, you have to meet water competition everywhere, in some degree?

Mr. LOVETT. Yes, sir. That takes the New York-San Francisco as a basing rate and adds the local back, when the freight never goes to San Francisco or within 150 miles of San Francisco. Does that answer your question?

Mr. SIMS. I knew all that.

Mr. LOVETT. I am very sorry—

Mr. SIMS. That is all right; it goes in these hearings. We had that up before, though, and that is why I happened to know about it. The railroad company has to meet the water competition from New York to San Francisco or else not do business. Now, Reno prefers to pay the local rate from San Francisco to Reno in order to get the advantage to that extent of the water reduction.

Mr. LOVETT. Certainly.

Mr. SIMS. I understand that perfectly, and understand why it is. That is a special case and a case where it is compelled by water competition. But the question I am getting at—you have answered here, and, I think, very correctly, that the terminal costs are going to increase, and you have shown here why the New York Central had to meet the terminal expenditure for passenger traffic in New York City.

Mr. LOVETT. I can answer very briefly, Judge Sims—

Mr. SIMS. I will ask it, so as to make it contiguous. Your company operates from San Francisco to Reno, does it?

Mr. LOVETT. No; the Southern Pacific does.

Mr. SIMS. I mean the Southern Pacific.

Mr. LOVETT. Yes.

Mr. SIMS. Now, if some other great company, a strong railroad company, enters San Francisco and puts up enormous, beautiful, and attractive passenger terminals, and the Southern Pacific, in order to compete with it, just as you have described in New York, puts up a very fine terminal there, the tendency of which is to reduce their ability to perform their general service as well as they otherwise could, ought the Reno man have to pay an additional cost on his freight that neither goes to San Francisco nor, if it did, would enter a passenger terminal? I am trying to see what effect these increasing passenger terminal services are going to have in an economic way upon the railroads, unless there is a specific terminal charge paid by the passengers who use them.

Mr. LOVETT. I can make this general answer, Judge Sims: You can not split up the different elements in the cost of railroad transportation. It is easy to find sources of revenue, how much from passengers, how much from freight, and how much from particular commodities. The Interstate Commerce Commission attempted to require the separation of the expenses on the passenger and freight business, and we are making some statistics. What they do with them I do not know. But your idea, as I gather it, is that it is not

fair, for instance, to require a shipper of freight to be taxed with any part of the capital of providing these great passenger terminals.

Mr. SIMS. That is the thought.

Mr. LOVETT. Yes; that is the thought. You can follow that out, for instance, by saying that here is a coal shipper that does not use freight houses or freight terminals. Is it fair to require him to bear a part of the expense, not merely of providing a passenger terminal in New York but of freight stations all along the line and passenger stations at various points along the line? There is about as much reason in one as in the other. The shipper of freight who does not use the New York terminal is interested in the general operations of the New York Central. It is to be supposed that the construction of this very expensive terminal in New York was a good business proposition for the New York Central; that it either preserved its revenue against the aggressions of a competitor or produced additional revenue. In either event it lightened the burden on the shipper. If it was not a good business proposition, if it was not for the interest of the New York Central to build this terminal, and for the Pennsylvania to build its terminal, it was not for anybody's benefit. But, theoretically, and as far as I am able to judge of the situation actually, the construction of those terminals was good business for the general welfare, and either by increasing the passenger business or by holding what they had to their lines, they swell the general resources and general revenue of the company and to some extent lighten the charge which the freight shipper would otherwise have to bear.

Mr. SIMS. For competitive purposes and the purposes you have just named, it seems to me it is beyond criticism; it is ideal. But we get right back to the question, Is it a nation-wide benefit? You described yesterday, I think it was, a large number of weak roads that were carrying more traffic than the strong ones. Now, every competitive action of this sort further weakens the weak road, and if the weak road performs a service as it should be performed, of course the stockholders must either accept less revenue or the patrons must pay a higher rate, or else absolute bankruptcy must come by such means of competition. Now, competition is all right if competition is to be the theory; but to avoid competition is the very reason why these great systems of railroads have been brought up and built up—to have as few competitive points as possible.

Mr. LOVETT. I do not agree to that.

Mr. SIMS. Now, if competition as a principle and as a practice, general competition, is beneficial, then the more competition the better for the public, for the people.

Mr. LOVETT. I am not expected to express any assent or dissent where you are expressing your own opinions.

Mr. SIMS. No; that is simply my own opinion. I would not expect you to indorse my views unless they are yours. And in this case I am not expressing my views; I am only saying what appears to me would be the effect if competition is to be the rule adopted with reference to public utilities. If all lines are to be competitive they would all have to build fine passenger stations, or none build them. But where competition is reduced, and by the very reduction of

competition you have built up such great systems as the Pennsylvania and the New York Central and the Union Pacific—I mean by reducing the number of owners, the number of competitive properties—you have brought about a benefit. Now, if reducing competition in an area is a good thing, why would it not apply to the whole United States, if it could be so applied?

Mr. LOVETT. I do not believe that reducing competition is a good thing. I have expressed myself several times before this committee as distinctly in favor of competition in facilities and service.

Mr. SIMS. I know you have. But reducing competition among quite a number of railroads was what made the New York Central system, was it not?

Mr. LOVETT. I do not understand so.

Mr. SIMS. It made the Pennsylvania, did it not?

Mr. LOVETT. I do not understand so.

Mr. SIMS. Without asking for any particular system, did you not say yesterday that many of these systems, or some of them, have absorbed many weak, unprofitable lines and made them a part of their system?

Mr. LOVETT. Yes.

Mr. SIMS. Do you not think that it was a benefit to the people on those weak lines to have them thus absorbed?

Mr. LOVETT. I think it was.

Mr. SIMS. Therefore this elimination of competition——

Mr. LOVETT. I did not mean to say that they absorbed weak lines that were competitors.

Mr. SIMS. You mean technically, I suppose. Well, it was a benefit to them, or they would not have done it?

Mr. LOVETT. Yes. They got them at a bargain, probably.

Mr. SIMS. It became a benefit to unify the service in this area?

Mr. LOVETT. Yes. There are a good many lines that we would like to absorb that are not competitors if we could get them at a satisfactory price. The question of price enters in.

Mr. SIMS. You would like to absorb the Pennsylvania, I imagine, and the New York Central, if you could buy them at a profit; I mean if you could make money by doing so?

Mr. LOVETT. It is a little too big for us.

Mr. SIMS. I said you would like to; I did not say you could do it.

Now, I do not know whether you have given thought to this or not, but when we take the burden of transportation—call it a burden or a benefit, whichever way you want to—of all transportation, railway and water, highway, trolley or other kind of railroad, transportation of every kind, I will ask you if, in a general and large way, taken altogether and all added together, if it does not amount to 50 per cent of the cost to the ultimate consumer—what he finally pays for it, upon the average?

Mr. LOVETT. I have no information on that subject, Judge Sims.

Mr. SIMS. The gross receipts of the railroad companies are shown in round numbers to be \$4,000,000,000 a year now for such as have reported gross earnings. Of course, the shipper or patron pays the gross charge; he has nothing to do with the net. Now, I have not heard of anybody claiming that the railroads of this country, includ-

ing every element of value, are worth over \$20,000,000,000. In five years the gross earnings would absolutely pay for every railroad in the United States, with all elements of value now included.

Mr. Lovett. The gross earnings?

Mr. Sims. The gross earnings would absolutely pay for every railroad in the United States in five years.

Mr. Lovett. But who would pay the operating expenses?

Mr. Sims. I am talking about what it would cost the person who pays the gross earnings; and gross earnings of every kind are net losses to the consumer.

Mr. Lovett. Judge Sims, you know the cotton grower and the wheat grower will tell you that the producer pays the cost of the freight, and the man who buys the cotton and wheat will probably say that the consumer pays it. That is a big economic discussion that I can not go into.

Mr. Sims. If this railroad problem is not a very big economic one, in a national way, I do not know why.

Mr. Lovett. It is; very big.

Mr. Sims. Of course, if rates are reduced from the wheat-growing regions of, say, Kansas to New York, the price of wheat products will be reduced to some extent in New York, and the price of wheat will be to some extent advanced in Kansas, due to that?

Mr. Lovett. That is a theory, Judge.

Mr. Sims. The farmer who ships from Iowa does not get all the benefit of a reduction of rates, because if the purchaser of the farm products in New York, who distributes them there, can buy them that much cheaper, of course, he will do it. Consequently, when there is 1 cent more charged for carrying these products from the place of production to the place of final and ultimate consumption, than might by some change in the method of transportation be charged, it must be either a net loss entirely to the shipper or a net benefit entirely to the consumer, or a divided cost and reduction?

Mr. Lovett. That is a problem in economics upon which I have some views, but I think you are quite as capable of deciding that question as I am.

Mr. Sims. It seems to me it is inevitable that such would be the result, only in exceptional circumstances. Therefore, every consumer of products that pays freight of any kind, wherever he may be situated, is vitally interested in the cost of transportation, and that makes him vitally interested in every element of the cost of transportation.

Mr. Lovett. My own opinion, if I may observe right here, is that 99 per cent of the people of the United States are more interested in the quality of the service than in these fine shades of cost.

Mr. Sims. Mr. Lovett, would a man in New York, making bread, care anything about whether the wheat was shipped in a silver-lined car or in an open flat, just so he got it?

Mr. Lovett. No; but he would be interested in facilities that would put it to him when it was needed.

Mr. Sims. With the greatest expedition and the least charge on the wheat. Now, I want to ask you another question, Mr. Lovett: Do you not think that if conditions remain as they are now—if the States

retain all their powers to regulate and do the things they are doing, and the United States Government exercises such as it sees proper—that the economic hindrances which are now felt by the railroad companies in the way of credit operations are going to be increased instead of decreased?

Mr. LOVETT. I think so.

Mr. SIMS. Is it not naturally inevitable?

Mr. LOVETT. I think the present method of regulation is intolerable or will become so.

Mr. SIMS. Do you mean by "intolerable" that it is going to cost, if it is continued to its probabilities, a sum which the people will not agree to pay in freight or passenger fares?

Mr. LOVETT. I will not say that it is going to cost any such sums as you suggest. It may or may not. But it is going to deprive the people of the additional transportation facilities they must have in this country.

Mr. SIMS. And is it not going to increase the cost to us of those that we have?

Mr. LOVETT. I think it will.

Mr. SIMS. Why, this very matter of terminals; if the cost of terminals is going to be an ever-increasing proportion to the total cost of a railway line, and the cost of these terminals must be absorbed in part at least—assumed, if you want to use that word—even that of itself will increase the operating expenses of the railroads to a very great extent that can not now be foreseen. Along a line that is a rather delicate one at this time, can anybody foresee now what effect or what the cost of the labor charge upon railroad services is going to be in the future?

Mr. LOVETT. I can not.

Mr. SIMS. It is utterly impossible to foresee just what effect it is going to have?

Mr. LOVETT. I am quite sure that it will not lessen.

Mr. SIMS. That it will not grow less?

Mr. LOVETT. Yes; I do not say that it should. I think labor ought to be well paid, fairly paid.

Mr. SIMS. And I see immediately, since the decision of the Adamson law case, that the railroads are applying for 15 per cent increase in freight rates.

Mr. LOVETT. I notice an application is made by most of the roads.

Mr. SIMS. I say there is an application for 15 per cent increase in freight rates due, I suppose, to some extent, perhaps very largely, to the supposed increase by reason of putting the Adamson law into operation.

Mr. LOVETT. I read Mr. Rea's statement to the effect that increase in the price of coal alone added six millions a year to the operating costs of the Pennsylvania, and the increase of the wages due to the application of the Adamson law meant nine millions, and that the increase in the cost of all materials required in maintenance and operation, which Mr. Rea estimated at one half of the total cost, the other half being labor, added an amount which I do not remember, but which, with increase in taxation due to recent acts of Con-

gress, meant a total addition to the operating costs and taxes of the Pennsylvania system aggregating \$29,000,000 a year. If that is true—and I have no sort of doubt it is—it simply means that the Pennsylvania and all other roads similarly situated must have an increase in rates.

Mr. ADAMSON. Judge Sims, pardon me right there. Congress, in passing the Adamson eight-hour law, provided a method of determining a dispute as to whether there would be an increased cost on a proper compliance with that law, and if so, how much it would be. Now, my suggestion to you is that if you would avoid that conflict for the present and avoid the law by letting the men run  $12\frac{1}{2}$  miles an hour, with properly loaded trains, and base your application for increased rates on the irrefutable fact that money is cheaper now than at any other time in the history of the world, and does not buy so much, I think you would have some hope of your increase.

Mr. LOVETT. We know, Judge Adamson, just what it is going to cost us.

Mr. ADAMSON. You know what it is going to cost if you do not regard it; but if you regard it and let those men run 100-mile runs in eight hours, which they all say they can do, it will be quite different from Mr. Rea's estimates.

Mr. LOVETT. Yes; those men talk—they are very shrewd and they are good negotiators; I do not know any abler men in the country—but we know what it amounts to. We know if we increase the speed of our freight trains we have got to reduce the load.

Mr. ADAMSON. Of course, you have got to reduce them to a proper load.

Mr. LOVETT. And if we reduce the load, we will have to run more freight trains and employ more men.

Mr. ADAMSON. Engineers and conductors came to our committee room and told us that if you figure on your drawhead breaks and delayed time caused by derailed trains, that will more than counterbalance the saving.

Mr. LOVETT. It is too bad that out of all the supposed talent that is engaged in railroad operations in this country, the universal conviction of the men who are running the railroads is to the contrary. Put one of these men that came before your committee and told you that in the position of superintendent and see how long he would act on that principle.

Mr. ADAMSON. It is too bad, but nevertheless it looks reasonable that all the numerous conductors and engineers who run your trains may be supposed to know as much about the actual physical operation as superintendents and managers.

Mr. LOVETT. Yes; but you must also consider when a man is trading.

Mr. ADAMSON. We have got to consider that; and in considering that difference, we passed a law to determine it.

Mr. LOVETT. Yes.

Mr. ADAMSON. Now, I do not think you are going to get anywhere by forestalling or trying to forestall the method and instrumentality provided by Congress to decide that dispute between you.

Mr. LOVETT. I do not understand there is any effort to forestall it; but the railroads can show to anybody their present condition resulting from these various items. They have so much net money, the rates remain the same, and we have so much net under former conditions. Here, for instance, is the price of coal; we know what that is. We know what these additional taxes are. We know what difference we are paying for material, for equipment, and everything that is used for maintenance and operation of the road. There is no theory about that. And we think we know pretty well what the additional cost of the Adamson eight-hour law is.

Mr. ADAMSON. You have got a commission appointed to hear that during the next nine months.

Mr. LOVETT. Yes; and if we wait for the report of that commission for nine months to see what they are going to do, some of the roads may be in the hands of a receiver in the meantime.

Mr. ADAMSON. You had better change the way you have been figuring and tell the men that necessary overtime is allowed and let them run a hundred miles in eight hours, as they said they could do.

Mr. LOVETT. I know perfectly well that they can run a hundred miles in eight hours; but when they do it we must put on more trains and employ more men.

Mr. ADAMSON. You mean if you stop overloading your trains and make them less than 2 miles long, with two or three engines at the head of each one, you will have to put on more trains, of course.

Mr. LOVETT. I deny very emphatically that they are overloading.

Mr. ADAMSON. It should be required that you do not overload your trains and do not run them too long and that you do make trains that are mobile.

Mr. LOVETT. Any railroad man that overloads his train ought to be fired.

Mr. ADAMSON. I see it down in my country every time I see one.

Mr. LOVETT. Judge, perhaps you are not as good a judge of overloading trains as railroad men.

Mr. ADAMSON. I have been an administrator of railroads as long as you have. I have seen the trouble that these men have with trains breaking down and costing you more than if you made them of the proper size.

You and I are both administrators of these railroads. The difference is that you get paid for it and I do not; and I am not on the side between one class of employees and another.

Mr. LOVETT. Nor am I, Judge.

Mr. SIMS. Now, I want to drop back to where I started.

Mr. ADAMSON. I thought I would relieve Judge Sims for a minute.

Mr. SIMS. It was a very interesting break in.

Mr. ESCH. I assume Judge Lovett would like to finish his testimony by half past 1. There are two other members of the committee who have not yet put their questions. Would it be possible for us to finish with Judge Lovett to-day?

Mr. ADAMSON. I will ask Mr. Hamilton and Mr. Townsend if they can finish.

Mr. SIMS. I am trying to finish as quickly as I can.

Mr. ADAMSON. How much time do you want, Mr. Hamilton?

Mr. HAMILTON. I do not care how much time I get. I have only a few questions.

Mr. ADAMSON. How much time will you take, Mr. Sims?

Mr. SIMS. It all depends on Judge Lovett's answers.

Mr. LOVETT. I will answer yes and no, if you so desire.

Mr. SIMS. I want you to answer as you have been answering. I am after information. I have not come into this investigation with a fixed opinion one way or another. I want to get all the information I can get out of you gentlemen. I know this country will regard your opinions as entitled to weight, and I see no objection on earth to what Mr. Adamson has said or to the answers Mr. Lovett has given.

Mr. HAMILTON. I think the best information on earth is information that is boiled down.

Mr. SIMS. Then, if you want to abridge this examination—if you want to boil it down—we might as well say we will adjourn in 10 days.

Mr. HAMILTON. Oh, no.

Mr. SIMS. I do not want to get away from what I had in my mind and what I was intending to bring out by referring to this application for an increase. With the tendency and effect of State regulation and the exercise of the powers of the States which they now lawfully exercise, from the fact that Congress has not occupied the field—I suppose that these railroads that have applied for an increase of rates are candid and sincere and that they would not ask for it if they did not think that they had to have it; that they are not asking for it simply to augment profits. I am assuming that to be the case.

Mr. LOVETT. I think your assumption is entirely justified.

Mr. SIMS. I have no right to draw any other assumption unless I knew facts to the contrary. Now, suppose the Interstate Commerce Commission agrees with these railroad companies and authorizes the increase—it has no power to make it mandatory, of course—but suppose that each State through which these several railroads run, with reference to a part or all of the items on which the increase is made, exercises the power that Pennsylvania did and nullifies the increase. Would the railroads get any benefit by reason of the increase if it should be so treated by all the other States?

Mr. LOVETT. If the decreases of the States were put into effect it is obvious they would not.

Mr. SIMS. I am supposing they will do like Pennsylvania; that they will make an order nullifying the increase. It is within the powers of the States in the present condition of national legislation. So there is bound to be, necessarily, with the amount of power that the States have and with the unoccupied Federal field covered by State legislation and with the tendency to increase this exercise of power on the part of the States, that the commission is powerless to put in a rate or to give a rate that can be successfully operated or maintained, and therefore the uncertainty must not only remain—the uncertainty that now exists—but it must increase. Now, is not that a thing to be reasonably apprehended?

Mr. LOVETT. I have apprehended such conditions. Of course, as to how far the Shreveport case may be applicable to the particular situation you describe I am not prepared to say.

Mr. SIMS. I am speaking of possibilities, and possibilities to the States that are profitable to their inhabitants are very likely to become probabilities. I want to ask you, Judge Lovett, if Congress does not have the power, within the limitations of not making a law that will operate to confiscate property—if Congress does not have the power to declare all classes of traffic mailable matter and prescribe the rates of railway mail pay for any and all classes of property?

Mr. LOVETT. I should think so, within the bounds of reasonable rates.

Mr. SIMS. Railways doing an interstate business?

Mr. LOVETT. Yes, sir; I think so.

Mr. SIMS. Congress has created what is called the parcel-post law, which simply added a number of articles and increased the weight of packages and also reduced the postage; and the railways are complying with it because it is not confiscatory. Now, sometimes we get up the idea—at least it so appears to me—that there is something sacred about the movement of the United States mails; that if a strike should prevent the moving of the United States mails, it would be of greater consequence to the public on that account. In other words, if it is criminal at all, or immoral, it would be of a higher order of criminality or immorality to stop the United States mails than other kinds of property being transported, and we should give the United States Government the power to move the United States mails. I can not see anything sacred about the moving of the Sears & Roebuck catalogue in interstate commerce any more than moving a dozen of eggs through interstate commerce, or anything of that sort. Now, if Congress can declare all goods mailable, regardless of size or bulk, by simply prescribing rules that will make it practicable to do so, has not the United States Government, through Congress, at this time, the power to absolutely control all intra and interstate commerce, so far as the rate to be paid and general rules and regulations, by simply extending the present parcel-post law in the way I have indicated?

Mr. LOVETT. I have not supposed Congress had the power to declare everything mail matter.

Mr. SIMS. Why not?

Mr. LOVETT. It is not mail matter.

Mr. SIMS. What is constitutionally expressed mail matter?

Mr. LOVETT. I do not know that the Constitution expresses it.

Mr. SIMS. Then it is not unconstitutional to do it?

Mr. LOVETT. Congress can not make a cow a horse by simply declaring it so.

Mr. ADAMSON. The Constitution does not say "mail matter." It says "post offices and post roads."

Mr. LOVETT. I think this answers your question, Judge Sims, if I understand it: Congress has the same power over interstate commerce and with respect to the movement of interstate commerce as it has with respect to the movement of the mails.

Mr. SIMS. Now, in practice and in theory, what is the difference in sending a 50-pound package over a railway train——

Mr. LOVETT. And sending a carload of coal?

Mr. SIMS. Yes; and sending a 500-pound package?

Mr. LOVETT. The difference is a 50-pound package and a 500-pound package.

Mr. SIMS. I mean in principle and legal effect or constitutional power. The facilities certainly do not depend upon constitutional requirements. I think your first answer was exactly correct, that Congress does have the power. It might not be wise to exercise it, and it may never do it, but it does have the power to declare all kinds of products transportable in the mails, and prescribe the classes and the rates and everything as it does now, touching the present parcel post.

Mr. LOVETT. I stated in my answers to questions before, several times, that according to my understanding of the power of Congress under the Constitution, Congress can make complete regulation of commerce on interstate railroads—railroads engaged in interstate commerce. I believe it can do that without the necessity of declaring a carload of coal to be parcel-post matter—subject to parcel-post transportation or mail matter. It comes under the power of Congress to regulate interstate commerce. I think Congress has complete power over the subject, with existing corporations, and it is merely a question as to what is the best and most practical method of dealing with the subject—how will operate—whether best on existing corporations or whether it will be better to make them Federal corporations——

Mr. SIMS. I am coming to that. If we grant compulsory national charters, can we not make that one of the general provisions, that the railroad company shall carry, at the rates prescribed, whatever Congress declares to be mailable matter or subject to be carried by these railroads, and prescribe the terms?

Mr. LOVETT. That is a constitutional question. If Federal incorporation were not compulsory, but left optional, Congress could require corporations, as a condition, to assent to any condition that Congress might impose, and it would be a part of the contract. But if it is to be compulsory, I do not think Congress can compel them to carry except at reasonable rates.

Mr. SIMS. A rate that is not confiscatory is constitutional, is it not?

Mr. LOVETT. I think it is.

Mr. SIMS. It can, in this way, take charge of the traffic all over the country?

Mr. LOVETT. Yes.

Mr. SIMS. And in which case, the States through which the railroad may run, through its regulations, could not affect it?

Mr. LOVETT. No; it could not.

Mr. SIMS. And that is one of the things that is thought to be to the economic advantage of the railway service of the country.

Mr. LOVETT. To the extent that it involves rates and the issuing of securities——

Mr. SIMS. Rates is all of it. That is very fundamental, is it not?

Mr. LOVETT. No; I think the most urgent aspect of the matter is the necessity of regulating the issuance of securities.

Mr. SIMS. How can you market securities unless you can show to the parties to whom you wish to sell them, that you have a rate that will enable you to pay the interest?

Mr. LOVETT. You can not.

Mr. SIMS. Then, rates is a fundamental matter then, is it not?

Mr. LOVETT. Yes.

Mr. SIMS. As stated yesterday.

Mr. LOVETT. Yes.

Mr. SIMS. You remember Senator Cummins's inquiry the other day of you was, in substance, what can be done to give the weak railroads what they need and must have, without giving the strong roads the same degree of aid, which they do not need? I believe that was the substance of Senator Cummins's question.

Mr. LOVETT. I should prefer to refer to the record.

Mr. SIMS. That covers the substance of the inquiry. As I understand, he wanted to know what Congress can do—what can be done—to give the weak railroads such relief as they need, without giving that same relief to the strong roads, which do not need it.

Mr. LOVETT. I think I expressed my views on that.

Mr. SIMS. And your views were that the Government would have to do it; that it could not be done without the other roads participating in it.

Mr. LOVETT. Or, in substance, that I do not believe Congress or the Government could compel a comparatively small group of people owning the stock of the prosperous roads to assume for the whole country, or for the patrons of a weak road, a burden that did not concern them, but concerned, rather, the whole country; that if the interests of the country required the weak road to be operated, then either the Government or the whole people should bear the burden, or the people who are served by that road should bear it. That it should not be put on a particular group of people who have no interest in the matter.

Mr. SIMS. That looks like it applies to great terminals as well.

Mr. LOVETT. I do not think it is analagous. A great bridge may be required to be built over some stream involving an extraordinary expense. That may be used only by this particular line for a certain portion of its haul—

Mr. SIMS. And the railroad must necessarily collect something more out of that portion of the haul that does not use the bridge than they would ordinarily charge?

Mr. LOVETT. You can not separate it.

Mr. SIMS. And that railroad could not exist without doing that?

Mr. LOVETT. Of course not.

Mr. SIMS. Because it would be so oppressive to the freight that did go through the tunnel, where it goes over a mountain or a bridge, where it traverses a stream—it would be so oppressive to that particular traffic as to prevent the traffic from moving.

Mr. LOVETT. The Union Pacific has several hundred miles of railroad that does not produce a dollar.

Mr. SIMS. I know it will be a matter of relief to the committee, if not to you—I am about to quit—but I want to come down now to the inevitable.

Mr. LOVETT. Not on my account.

Mr. SIMS. No; not on yours. I have no mercy on you.

Now, looking at it as I do, that regulation will increase instead of decreasing through Congress, through the States, and every other regulating power, I can see how that regulation may not be profitable to the present stockholders of these railroads. I can see very easily how it may make it less profitable, but the object of all that regulation is, as I understand it, for the benefit of the public, as viewed by the regulating body. Now, if the Pennsylvania Railroad serves a section, which it does serve, better than it ever was served before, by means of consolidation and unification; by means of the economies it is able to adopt, why would it not be a good thing to have the Pennsylvania Railroad serve the whole United States? Of course, it would eliminate these things you spoke of in the way of competitive service.

Mr. LOVETT. The answer to that is—

Mr. SIMS. That would apply to the Union Pacific or any other well-regulated railroad.

Mr. LOVETT. In other words, whether one railroad should not own them all?

Mr. SIMS. And let this charge for transportation facilities, like you said about the bridge and tunnel, fall on the whole country.

Mr. LOVETT. My judgment, as I have expressed it several times, is that it would absolutely eliminate competition, and it would be a great detriment to the country; it would cause stagnation of improvements in railroad facilities. You would not have the conveniences and service and facilities which you have to-day. It takes the spur of competition and the spur of example to make these improvements and develop initiative. There was never a truer expression than "necessity is the mother of invention," and the necessity of meeting competition is responsible for the development and inventions in the railroad service to a very great extent. There is a difference of opinion among railroad men, but my best judgment is that competition in service and facilities is necessary for the development and improvement and progress of the railroad business of this country, and to avoid stagnation.

Mr. SIMS. Now, Judge, don't you think, if what you say is true—I am not controverting it—that if competition in ownership is a benefit to the whole service, don't you think, then, that competition in regulation might tend in the same direction?

Mr. LOVETT. No, sir; it is a hamper.

Mr. SIMS. You are not in favor of competitive regulation?

Mr. LOVETT. I am not.

Mr. SIMS. But you are in favor of competitive ownership?

Mr. LOVETT. Yes.

Mr. SIMS. But you must admit—

Mr. LOVETT. I do not know; "competitive ownership" is a new phrase. I am in favor of competition in service and facilities.

Mr. SIMS. Then you are in favor of competition in ownership.

Mr. LOVETT. I will accept that phrase. It is a new one to me.

Mr. SIMS. What you mean is the railroads should not be owned by one company.

Mr. LOVETT. Yes; I will accept your answer to that question.

Mr. SIMS. Is it not a fact that, as a rule, your railroad company, or any other railroad, will not do a thing unless it will operate in a general way as a benefit to the company?

Mr. LOVETT. It depends on your definition of "benefits." We do a great many things that produce no financial reward or return, but it goes to the general improvement of the public relations, or it may be advertising, or any other matter. It is to our benefit to have the good will of the people. We do a great many things for the sake of good will.

Mr. SIMS. And you think that competition between different companies serving the public brings about more good to the public?

Mr. LOVETT. More regard for the public.

Mr. SIMS. Does not competition in systems as well as in railroads result in duplication of the instruments of service—unnecessary duplication of instruments of service?

Mr. LOVETT. Yes.

Mr. SIMS. And therefore adds to the general expense growing out of competition?

Mr. LOVETT. Yes.

Mr. SIMS. Now, as legislators we have to decide between necessary facilities—those that are absolutely necessary—and increased conveniences or luxuries. In deciding between them which do you think the country would indorse?

Mr. LOVETT. Why, Judge Sims, the American people is a Nation of spenders and are progressive. They do not want to be held down to the smallest amount on which they can get through. They want the facilities and conveniences of doing business and they want comforts, and, generally, they are willing to pay for them. I do not think anybody would want to see the Pennsylvania terminal in New York or the New York Central terminal in New York eliminated, to avoid an infinitesimal amount in the general cost of the transportation afforded by those companies. We must have improvements and progress. The sentiment of the people, I hope, never will be such that they want to get through on the smallest possible amount.

Mr. SIMS. Suppose the New York Central, of which you are a director, should run sleepers without charge on their lines. The Pennsylvania, serving the same points, would have to do it also, would it not?

Mr. LOVETT. Undoubtedly.

Mr. SIMS. You would either lose money by doing so or charge the people not using those sleeping cars more than they would otherwise be charged for the service rendered?

Mr. LOVETT. Yes.

Mr. SIMS. That explains the difference between what I think is a luxury, or comfort, and a necessity. I do not believe it is wise for us to adopt any policy which would permit increased cost upon the necessities of life that must move, simply in order that some people who are not limited in their resources may have accommodations for which they do not wholly pay.

Mr. LOVETT. There is no danger of that. If the New York Central or the Pennsylvania should give free sleeping service, and wanted to increase their rates, the Interstate Commerce Commission would

say to them that the burden of transportation was not properly distributed and that they should charge the man using those accommodations, and get the revenue they wanted out of the men being carried free in the sleeping cars.

Mr. SIMS. Don't you think that is exactly what they ought to say?

Mr. LOVETT. Yes; and, therefore, there is no danger from that source.

Mr. SIMS. Why not, if competition makes it necessary?

Mr. LOVETT. Because they know the country would not stand for it.

Mr. SIMS. Supposing the New York Central and the Pennsylvania, both serving Chicago—one should furnish free sleeping cars, the other would have to do it, would it not?

Mr. LOVETT. Yes.

Mr. SIMS. And would they not get their money for that service out of the other people using these transportation facilities?

Mr. LOVETT. No; the Interstate Commerce Commission would say to them, "If you can afford to run these cars free, you can reduce your freight rates, because you are not distributing the cost of your service properly. We will make you reduce them."

Mr. SIMS. Would you not come back and say, just as you have about the terminals, that it increases the popularity of the road and the service to the patrons?

Mr. LOVETT. They are not analogous at all, Judge.

Mr. SIMS. They may not be. I am trying to ask questions in order that I may get this information from you.

Mr. LOVETT. Then I would say, as an answer, that there is no sort of relation between suitable terminal facilities and free sleeping facilities.

Mr. SIMS. If you pay twice as much for a terminal in New York as is needed from the standpoint of necessity, I can not see why you should not be permitted to do some other expensive service along that line if it is made necessary by competition.

Mr. LOVETT. That is, assuming they paid twice as much as was necessary.

Mr. SIMS. I am assuming they did, and that it was made necessary by one terminal being built, making it necessary to build the other.

Mr. LOVETT. I will have to take the contrary assumption that they did not.

Mr. SIMS. I want to ask you how can any theory of public-utility economics justify the placing of Mr. Cassatt's statue in the Pennsylvania Station in New York if it becomes a charge on the whole line?

Mr. LOVETT. I think that was a very proper and appropriate expenditure of the company's money.

Mr. SIMS. Of the stockholders' money.

Mr. LOVETT. Well, of the stockholders' money.

Mr. SIMS. That is right—the stockholders' money.

Mr. LOVETT. I think it was a very proper expenditure, whether you choose to call it the company's money or the public's money. Mr. Cassatt conceived that enterprise, and he pulled the Pennsylvania Railroad almost out of the mud and made a great railroad out of it. I think he was one of the greatest benefactors of the country.

Mr. ADAMSON. Considered merely as an ornamental statue, does not Mr. Cassatt's statue look as well there as anybody else's statue would look?

Mr. LOVETT. Perhaps more so.

Mr. SIMS. I am holding it is not necessary to put his statue or anybody else's statue there.

Mr. LOVETT. That is where you and I differ. You assume that the people of this country want to hold the railroads down to the last cent in expenditures for necessities. I do not believe that is correct. I believe it is the policy of the Government, and I think it is the wish of the people, that we should make progress and development.

Mr. SIMS. I do not care how much the railroad owners spend of their own money, but I do object seriously to the owners imposing this cost or tax upon the patrons of the railroad, simply to meet a certain standard of taste or art that they themselves regard as desirable.

Mr. ESCH. This city has been filled with statues at the expense of the people.

Mr. ADAMSON. Along that line, I will say that one of the railroads in Atlanta has a flower garden in the grounds around the depot.

Mr. SIMS. There is no objection to putting these ornaments there, or taxing the people of the country for statues in this city, but remember that the taxing power puts them there. Whenever a railroad goes to ornamenting its property with something not conducive to and not aiding it in the services performed for the public, involuntarily paid by the public, to comply with a requirement of art or taste that they may have.

Mr. ADAMSON. If Judge Sims will just yield to me for a minute, while he is on this subject of discrimination, I would like to ask if it is fair on the part of the railroads to transport Tom Thumb, who only weighs 75 pounds, at the same rate they transport Ollie James, who weighs nearly 500 pounds?

Mr. SIMS. Self-interest forbids my being a disinterested witness.

Mr. HAMILTON. I want to say, for illustration, that the station in my town, on the Michigan Central, or the New York Central line, has been greatly beautified. The company has spent a great deal of money beautifying the grounds, so that it is one of the most beautiful stations anywhere in the country, and nobody complains about it. The people all along the line are proud of it. I think that is the general feeling. They are glad to see the stations of the railroads improved and beautified.

Mr. SIMS. Certainly. I am glad to see some women beautified and ornamented, but you do not want to pay for beautifying every woman in the country out of the Public Treasury.

Mr. HAMILTON. They do not have to pay for it.

Mr. ADAMSON. I insist that it is rank discrimination for the railroads to transport Judge Sims and, for instance, one of the newspaper men over there, not weighing half as much as Judge Sims, for the same rate. Why is it fair to let a big man ride for the same rate as a small man?

Mr. SIMS. I do not want to be understood as criticizing the putting of the statue of Mr. Cassatt in the New York Pennsylvania Station. I was trying to illustrate an unbridled and unlimited power of a public-service corporation to make an expenditure not necessarily related to the service performed.

Mr. LOVETT. We violate what I understand to be the principle you favor in passenger cars we buy; we include things that are not abso-

lutely necessary to the use of the car. In every station we build we violate that principle. Every other railroad does the same thing.

Mr. SIMS. I have not any doubt that these gardens—

Mr. LOVETT. Yes; we try to keep gardens at stations in the Rocky Mountains. If we felt there was public sentiment against those things, we would not do them.

Mr. ADAMSON. When the president of a railroad wears a Prince Albert coat he has two buttons on the back which do not button anything on the face of the earth, and somebody might object to that.

Mr. SIMS. I really want to finish my questions.

Mr. HAMILTON. Those buttons have a historic purpose.

Mr. SIMS. Judge Lovett, I understood you to say, although I am not repeating your words exactly, and I do not want to misstate them, that the Union Pacific Railroad provides for the creation of a pension fund, or sick-benefit fund, or things along that line, for their employees, and that the cost of that is to be charged up as operating expenses.

Mr. LOVETT. Yes.

Mr. SIMS. That is true, is it?

Mr. LOVETT. Yes.

Mr. SIMS. Now, that operating expense is paid by patrons of the road, is it not?

Mr. LOVETT. Yes.

Mr. SIMS. And that is paid for by those who use the road?

Mr. LOVETT. Yes.

Mr. SIMS. I think you further stated that in case the employees left the road, quit the service, that they lost these benefits?

Mr. LOVETT. Yes.

Mr. SIMS. Then you offer these benefits as an inducement for them to continue their service, in part?

Mr. LOVETT. Yes.

Mr. SIMS. And the public is paying for those inducements?

Mr. LOVETT. Yes.

Mr. SIMS. But you think, I suppose, that in a general way the service of the road is enhanced, its ability to serve the public is increased, by such a policy to the extent of the cost?

Mr. LOVETT. It is one of the inducements to the men to take the service, just like the salary. We pay the wages provided under the Adamson bill for the purpose of keeping them in the service. It is an inducement.

Mr. ADAMSON. I demand that you comply with the law, that there be no overtime, and that you be declared criminal if you do not quit. [Laughter.]

Mr. SIMS. Then, is it not done to prevent strikes on that railroad?

Mr. LOVETT. I do not think it will prevent any strikes.

Mr. SIMS. I mean, is that not the purpose you have in view?

Mr. LOVETT. I believe a man will think the second time before he gives up that employment and takes the risk of not getting back. Judge Sims, we have built clubhouses at various points.

Mr. SIMS. And eating houses, which you have described?

Mr. LOVETT. No; we do not build eating houses.

Mr. SIMS. I thought you said you built eating houses the other day.

Mr. LOVETT. No. We have built clubhouses costing anywhere from \$20,000 to \$50,000 each, equipped with baths and reading rooms and various other facilities to make the men comfortable, where the men can go as you would go to a club. We make them attractive. We did not have to do that, but we believed it would make employment on the road more attractive to the men—keep them away from saloons, perhaps. In many western towns the saloon is about the only place in certain hours of the night where there will be a house open.

Mr. SIMS. You mean you have lockers in those clubhouses?

Mr. LOVETT. Yes; we do.

Mr. SIMS. You consider the erection of those clubhouses both economic and humanitarian, I suppose?

Mr. LOVETT. Yes. We did it for a variety of considerations. First, to make the place attractive to the men, take care of them, make them better men and afford them better working conditions.

Mr. SIMS. While from the standpoint of private ownership you have the right to fill your central station with statues of anybody—yours or anybody else's—you have the right to choose to do all these things with your own money, to do just as you please, so long as you are not interfering with anybody else. The only question about these things is that when there is an ever-increasing burden upon the railroads, as admitted by yourself, an ever-increasing tendency to thus increase expenses, and a character of regulation which adds to your expenses, do you not think that improvements like the statue referred to should be charged to the dividends of the owners? In other words, that they should be paid for by the owners?

Mr. LOVETT. I do not.

Mr. SIMS. And not by the public?

Mr. LOVETT. I think they should be charged as part of the expenses of the road.

Mr. SIMS. If you can charge any part of such expenditures to expense, you can charge all such things to expense, can you not?

Mr. LOVETT. Yes. I do not know how the Cassatt statue was charged.

Mr. SIMS. I do not know, and I do not care. It may have been put there by an individual admirer of Mr. Cassatt.

Mr. LOVETT. I represent the public that my road serves, and I represent as well the stockholders, the bondholders, the employees, and our trustees, for everybody else, and we do not expend any money we think the public would disapprove of or the public object to paying interest in the way of freight rates. We never have spent a dollar that I thought the patrons of our road would object to. I believe our patrons approve of the building of these clubhouses and the growing of these flower and grass plots at the stations.

Mr. SIMS. The necessary requirements for the future development of the country are such that freight rates should grow less instead of larger. Is that not true?

Mr. LOVETT. If the time ever comes when I feel the public disapproves of these things, I would want to quit the railroad business.

Mr. SIMS. It is not a question of the public approving when the rates are going up all the time. They have got to pay the rates whether they approve or do not approve them, and you are speaking of the multiplicity of regulation as tending to increase your expenses,

which naturally brings about the question of the amount to be charged for your service, and you have nothing but service to sell.

Now, everything that brings about an increase in expenses are reasons or grounds or excuses for increasing freight rates. It seems to me, in view of the situation, that all such improvements, such as a fine terminal or a fine sleeping-car service, should fall as far as possible upon those who use such facilities. Now, I want to make a suggestion as an answer to Senator Cummins's inquiry the other day, and you can express your opinion or not, as you may desire, as to the suggestion. I am trying to look at this question from the standpoint of what is best for the whole country, including the carriers and including the people who are served by the carriers.

Mr. LOVERT. So am I, Judge Sims.

Mr. SIMS. And including those whose cost of living, in a large part, depends upon transportation costs.

Here is the way I would answer Senator Cummins's question and retain private ownership. Of course, everybody knows that the alternative, when everything else fails, is Government ownership. You said a while ago if the people did so and so you would want to go out of the railroad business. That means, as a matter of course, certain kinds of regulation. If the railroads become unprofitable, the people who own them will want to dispose of them, and what makes me think they are profitable is that there does not seem to be any demand for Government ownership by the stockholders of the railroads. I think that this country, in order to further develop as it should as a whole, must have increased railroad facilities, and, if possible, diminishing freight charges, if it is possible.

Now, as to private ownership I am going to suggest the following: On the questions of eliminating competition by systems or otherwise, and in order that the weak roads may be supported by the strong, my answer to Senator Cummins would be this:

Create a national corporation and authorize it to purchase all the railroads, terminals, docks, and other property necessarily connected with the operation of the railroads through agreement as to the value of the roads so purchased, to be approved by the Interstate Commerce Commission, or through condemnation, sale, and purchase. The money to be raised by an issue of bonds bearing not exceeding 4 per cent interest, guaranteed as to both principal and interest by the United States Government, and to be free from all taxation, both as to principal and interest by the United States Government, or any other taxing power, and also by the issuance of capital stock in amounts to be determined by the Interstate Commerce Commission, but upon which no dividends are ever to be paid in excess of 6 per cent per annum, but no taxes of any kind or by any taxing power ever to be levied or collected, both as to the stock and dividends thereon. That all rates and charges of every character are to be subject to the approval of the Interstate Commerce Commission before being put into effect; that all improvements of existing railroad properties requiring the sale of stocks or bonds, or both, shall first be authorized and approved by the Interstate Commerce Commission, provided that all surplus revenues of the corporation shall be first applied to the maintenance of the road and structures and the cost of such new improvements before using any of the proceeds of such bond and stock

sales. I mean after paying the dividends and interest. That said corporation shall be authorized and required to build any and all such additional railroads that may be required by act of Congress, or by the order of the Interstate Commerce Commission.

Mr. HAMILTON. May I interrupt you, Judge Sims, to inquire of you if some such method as that has not paved the way to Government ownership of railroads in Europe?

Mr. SIMS. Whenever I get through with this statement I shall be very glad to answer any questions you wish to ask me. I just want to make my statement uninterruptedly.

Mr. HAMILTON. I thought you had finished it.

Mr. SIMS. No; I have not.

Mr. HAMILTON. I beg your pardon.

Mr. SIMS. The Government also to appoint a certain number of the directors of this corporation, such directors' salaries to be paid out of the earnings of the corporation, similarly to the members of the Reserve Banking Board.

Now, just a word of comment. I am trying to avoid the objections of Government ownership and at the same time get as much of the benefits of unified ownership as possible. If 4 per cent is guaranteed on the corporation's bonds by the Government of the United States, the Government, of course, retaining a lien upon the property or the right to appropriate its proceeds, which is the same thing, would eliminate all competitive conditions as to capital requirements as far as bonds are concerned. The investment would be inviting to permanent investors of every kind and would not allow them to be taxed, would make them very attractive, while leaving all the property of the corporation, which means all railroads and terminals, docks, etc., subject to State, county, and municipal taxation, requiring that all roads, whenever the Interstate Commerce Commission should determine that it would be to the public interests to double-track its line, and for such purpose to sell bonds of the corporation, guaranteed by the Government of the United States, both as to principal and interest.

And now, in order to encourage the speculative investor to some extent authorize the sale of stocks, the dividend on which never to exceed 6 per cent, in such volume as the Interstate Commerce Commission may prescribe. That would provide for an attractive form of stock investment to the man or woman of small means. The stock and earnings, being exempt from all taxation, would give it an element of value which the stocks of no private company could have. Part of the directors being appointed by the President of the United States and confirmed by the Senate for such length of terms as might be thought advisable would give the public a sitting in, so to speak, and I do not think it will be contended for a moment that if all the railroads in the United States were operated by one great railroad company, both the weak and strong, that there would be any question to-day about them being able to market bonds and securities at reasonable prices. But certainly by putting the Government of the United States back of all of it would remove all question as to credit of the railroad companies—it would eliminate all the objectionable features now existing, as it appears to me, without resort to public ownership.

This is my attempt to answer Senator Cummins' question within the limits and by means of private ownership and by private operation.

Mr. ADAMSON. I do not know whether Senator Cummins will subscribe to that answer or not, but I submit that it would be more easily fixed if we merely provide that every railroad should do the best it could, then eliminate all thought about credit and finances, and make up the deficit out of the Treasury.

Mr. SIMS. That would be coming out of the taxpayer.

Mr. HAMILTON. I should like to supplement that suggestion of Judge Adamson by the suggestion that France recently acquired the railroad system known as the Western France for some such reasons as would be involved in the method of financing which you suggest.

Mr. SIMS. Now, I want to ask Mr. Lovett, and I am serious about this thing, although it may be a very impractical and impossible thing to do; I want to ask you seriously, Judge Lovett, not facetiously—I have not made this proposition as a mere matter of levity; I do not feel that as a member of this committee I should perform my duties along such a plane.

Mr. HAMILTON. I was not indulging in that plane; I was not indulging in levity.

Mr. SIMS. It may be very laughable to everybody who hears it, but I want to know of you, Judge Lovett, as you have had long experience in connection with railroads and your opinion is entitled to great weight, and it has great weight with me, as I believe you are a candid man with opportunities to know the facts, do you think such a plan as that is constitutional and would put the railroads of the country upon an enduring and substantial basis and remove them from all these aggravating and annoying and expensive troubles, of which you speak, and if that would not avoid, possibly, ultimate absolute Government ownership?

Mr. LOVETT. I see no constitutional objection to the plan, Judge Sims; none appears to me at the moment. But that is about all that really I can say for it.

Mr. SIMS. You mean favorably?

Mr. LOVETT. Yes.

Mr. SIMS. I want you to say just what you think. It does not make any difference to me.

Mr. LOVETT. It means the elimination of all competition.

Mr. SIMS. That is undoubtedly true.

Mr. LOVETT. And I have already stated my very strong conviction that competition in service and facilities is absolutely necessary for the development of railroad facilities of the country. That is one very serious objection I have to it.

Mr. SIMS. This would be an absolute consolidation. I admit.

Mr. LOVETT. As I understood the statement of the proposition no provision was made for the regulation of future capitalization and future enterprises except by the directors, that they could make whatever—

Mr. SIMS. Subject to previous approval of the Interstate Commerce Commission.

Mr. LOVETT. I do not think any one commission could perform all the duties or half a dozen commissions could perform all the duties that would devolve upon them under that plan.

Mr. SIMS. That is a detail of the proposed plan.

Mr. LOVETT. It is something more than a detail. There are the questions of sidetracks, shop facilities, new stations, branch lines, the question of statues and gardens at stations, substituting electric lights for oil lights, and the thousand and one capital expenditures that on a railroad have to be made, and which would have to be capitalized on the credit of the Government. These would have to be supervised by somebody. You could not administer it through any one governmental agency, and yet it is to be done on the credit of the Government.

Mr. SIMS. Conditionally.

Mr. LOVETT. But I believe if the time ever comes when the Government's credit must be used to provide railroad facilities, the Government ought to own the facilities it provides, unless it be some particular enterprise that the Government should provide for some special purpose. But for general transportation facilities such as you have indicated, I think if the Government is to hold the bag it ought to have control. I am opposed, however, to using the Government's credit for any business that can be conducted by private capital. The Government has complete and practically unrestricted right of regulation; and with reasonable and proper regulation it will get all the railroad facilities and all the capital that is needed for transportation purposes. I do not for the life of me see why the Government should use its own money or strain its own credit to provide what private capital will provide and still leave absolutely subject to Government regulation at most to the same extent as if owned.

I can not indorse the wisdom of any such policy.

Mr. SIMS. Right there, in the answer to Senator Cummins that I tried to frame, I had in mind your answer to Senator Cummins was as to these weak roads, that there was no recourse for them except Government aid.

Mr. LOVETT. I hope you did not understand me as advocating Government aid. Senator Cummins submitted the problem as to how this can be done. In telling how I thought it could be done, I do not wish to be understood as saying it ought to be done at all, because I do not think it should.

Senator CUMMINS. May I interpose a word there?

Mr. SIMS. Yes.

Senator CUMMINS. I do not want it understood that the thought in my mind contemplated the elimination of competition. I regard the maintenance of competition, so long as private ownership is our system, as absolutely necessary. The regrouping that I had in mind would have intensified rather than diminished the proper competition as to service, facilities, and the like. But not to treat lightly the plan just proposed by Judge Sims, because it has been very seriously studied, and it has been adopted in other countries, and is one of the things that is entirely possible, although I do not believe it is the best plan to handle the whole subject. Our railroads were not built upon any logical theory. The greater number of them were built because those who promoted them could make money out of their construction. That was a very worthy motive, too. But, as the country has built up, as the country has grown and expanded, these railroads are really not logically situated, and they can not compete with each

other on even terms, although they are compelled to compete with each other.

Mr. LOVETT. I do not wish to be understood as treating Judge Sim's proposition lightly at all.

Senator CUMMINS. I was not referring to Judge Lovett.

Mr. SIMS. I do not know whether you were through or not, Judge Lovett. I broke in there because I wanted to give you the reason why it was offered as an answer to Senator Cummins's inquiry, not that you suggested the remedy, and I thought Senator Cummins, as the saying is, "hit the bull's eye" in his question and in order to answer it as to how this can be done without Government ownership and yet have the benefits of Government ownership without the evils, if there are evils, I suggested this plan, of course, a mere crude outline, not including every administrative detail. I should like, if you have anything further to say about it, for you to proceed.

Mr. LOVETT. Nothing further occurs to me except possibly to refer a moment to somewhat similar systems in other countries. I am not familiar with all the details of them. But taking the French system, to which Mr. Hamilton referred, I understand that France has divided French territory into certain sections and fixed the rates on the railroads in each, and that the Government guarantee certain dividends and certain interest rates, which provide not only for the current return on the capital, but which amortize the capital, and after the expiration of so many years the capital will be paid off and the railroads will belong to the Government. That is about the only difference, and the fact that it provides only for a certain section of the country—that is about the only difference that exists, as I see it, between your plan and the French plan.

I think your plan would be much better than the French plan, because the French plan puts upon the present generation, or the present and the next generation the entire burden of the capital for these railroad facilities, whereas I think the burden of the capital ought to be a continuous burden to be borne by generation after generation that gets the benefit of it; and that would be the result of your system.

Mr. SIMS. I do not provide any length of time the bonds should run, because Congress could take care of that matter. Now, if private ownership with complex and multiple regulation results in an ever-increasing freight charge—

Mr. ADAMSON. I want to say something before you go any further. Judge Lovett and Senator Cummins have both explained that they are not guilty of levity. That leaves Mr. Hamilton and myself the only parties guilty if we remain silent. I want to say that I had not the slightest intention of indulging in levity. It was only a mild impulse on my part to express my failure entirely to agree with the proposition.

Mr. HAMILTON. I want to say most solemnly that I disclaim any intention of even smiling in that connection. It occurred to me that the guaranteeing of railroad obligations and some such system of finance also as suggested by Judge Sims had been tried out in various European countries, and had resulted in various instances in Government ownership of railroads, and it occurred to me that that was the next step in the direction of Government ownership, and

that Mr. Sims's proposal was paving the way to that end, and I therefore suggested it.

Senator CUMMINS. I mentioned it, because Judge Sims seemed to think or feel that there was in the room somewhere—I am not going to try to locate it—that there was levity, and I was trying to—

Mr. ADAMSON. I am sure I did not intend to be guilty of any levity. I urgently insist on perfecting the present system and look with disfavor on any proposed innovation. That is my position in the matter, and I agree with Judge Lovett—

Mr. HAMILTON. I think Judge Sims ought to be permitted to finish.

Mr. ADAMSON. But I do insist that if we are going to make a change and put the burden on the Government, there is no use for so much circumlocution about it. Just go ahead and put the burden on the Government without so much circumlocution.

Mr. SIMS. There is, it seems to me, in certain circles a disposition to treat the question of public ownership as a matter of levity. I do not mean by any member of this committee, but I am looking upon this resolution in its broad entirety, and it provides for the discussion of every possible situation or phase that can arise in connection with or touching railway transportation and other things related thereto. I have not any other motive, and I do not entertain any fixed opinion. I do want to ask another question, and then I am through as far as I know now. Mr. Lovett, do you think it would be more desirable and more beneficial to the country to have direct absolute Government ownership and control, thereby absolutely abolishing all private ownership of transportation facilities in this country rather than some plan by which we may have a unified control and service through a Government-controlled corporation?

Mr. LOVETT. I should consider either of them a great disaster, Judge Sims, to the country.

Mr. SIMS. I asked you to take your choice, if you would.

Mr. LOVETT. But if I have to take the choice of evils, I believe, if the Government is to be put in the position of guaranteeing the obligations, it might as well take the ownership in the first instance. I think that is what it would result in.

Mr. SIMS. Does not that imply, Mr. Lovett, that the Government would be doing an unsafe thing to do so?

Mr. LOVETT. Yes; I think so.

Mr. SIMS. Then, you think these railroads, all of them combined in one, getting capital at 4 per cent on bonds and not exceeding 6 per cent on stocks, eliminating all unnecessary and expensive competition, would not be able to pay the 4 per cent on bonds and 6 per cent on stock and maintain and keep up their lines?

Mr. LOVETT. Under such conditions as would exist, I think not.

Mr. SIMS. But I did not mean under present conditions. Of course, with a single corporation, a national corporation, doing all the business, to do which we now have several hundred. I understand the States would not have any regulative power over such a corporation.

Mr. LOVETT. The whole point about it, Judge, is that you eliminate by that sort of management all of the economies of private ownership. Every railroad management is struggling, while providing the best facilities they can at the rates they get, to do it in the most economical

manner possible. By that plan you absolutely eliminate the enormous forces working for economy.

Mr. SIMS. My own personal theory of all public utility service is that it should be done at the cost of performing the service without any kind of profit whatever; but if private ownership can give a service just as good as the Government can and, at the same time, make a profit upon the investment, the people are not hurt by private ownership.

Mr. LOVETT. Somebody has to pay for the railroads. If the Government takes them it has got to pay for them. My contention is that the railroads, through private management, can give the public better service at lower rates and still make a profit than the Government can, and pay interest on the bonds that are issued in securing the necessary capital.

Mr. SIMS. And build roads wherever they ought to be built?

Mr. LOVETT. Yes.

Mr. SIMS. Regardless of whether it pays to build them there or not?

Mr. LOVETT. The question of where they ought to be built depends on who is to determine that.

Mr. SIMS. Wherever they will benefit the country as a whole. When Germany took over the railroads my understanding is that they built railroads into parts of the country where the promised traffic would not induce private capital to build roads; but the Government built the roads, and afterwards those sections were so built up and improved by reason of the building of the roads that they became paying properties.

Mr. LOVETT. I know many sections in this country that would like to have additional railroads; that are without them and that probably never will get them under private ownership. I believe that if there were Government ownership they would, through a combination of interests and a pooling of interests in Congress—I mean no reflection by that; of course, you gentlemen know perfectly well what I mean—that many of those roads would be built and the burden would fall upon the whole people. Now, I do not believe the general commerce of the country ought to be burdened with the cost of building local roads that are not justified by commercial conditions and that can never support themselves.

Mr. SIMS. And because of the lack of which the locality they would serve can never be developed beyond its present status?

Mr. LOVETT. The locality would not be developed anyway.

Mr. SIMS. They were in Germany.

Mr. LOVETT. I know sections of the country that are unlike anything in Germany, and where Germany would not be able to do what they have done over there.

Mr. SIMS. I take it that Congress would never direct that a railroad be built where there was no possibility of development.

Mr. LOVETT. You have more faith in that than I have.

Mr. ADAMSON. I know some sections where the railroads say that, although they know that they are inviting to them, they do not want to encroach upon the territory of other railroads.

Mr. SIMS. The play of competition comes in.

Mr. LOVETT. I do not know of any such locality.

Mr. ADAMSON. I do. I am very familiar with several of them.

Mr. SIMS. I could give you one or two instances right in my own section of the country, but I do not think this discussion ought to proceed along the lines of exceptional conditions. I almost feel like apologizing to the committee and to you for the length of time I have consumed, but I might as well admit that it is my lack of information that has caused me to carry my questions so far.

Mr. LOVETT. It is absolutely all right, Judge.

Mr. SIMS. I am much interested in the subject, and in response to what I feel is my duty as an humble member of this committee, I want to say that I think you have been very frank and candid, and personally, as a member of this committee, I have derived very much benefit by taking up your time and the time of the committee.

Mr. LOVETT. Thank you very much, sir.

Mr. SIMS. I am through.

The CHAIRMAN. Mr. Esch, you may proceed.

Mr. ESCH. Judge Lovett, I want to take up the question of receiverships for interstate carriers for just a moment. Is the law with reference to receiverships for interstate carriers well established, or is there any Federal law that is sufficient to reach receiverships for interstate carriers?

Mr. LOVETT. I am not sure that I understand the question, Mr. Esch; but if you mean to ask whether there is any Federal law that provides for receiverships of interstate carriers as such, I should say no. Of course, if a Federal court gets jurisdiction of litigation, and if in the course of that litigation there is occasion for the appointment of a receiver, why, the court may appoint a receiver; but if you mean to inquire whether there is any law that provides for the receivership of an interstate carrier at the suit of the Government for the violation of any Federal statute, I do not remember any.

Mr. ESCH. I agree with you there is none. Of course, State courts can also take jurisdiction of these receiverships, can they not?

Mr. LOVETT. Yes; when they have jurisdiction of the subject matter of private litigation. And in addition to that the State, by virtue of the fact that it does create the corporaion, has power to forfeit its charter for an abuse of its corporate privileges or for violation of the laws; and in forfeiting the charter may appoint a receiver.

Mr. ESCH. It is a fact, is it not, the court first takes jurisdiction regarding it?

Mr. LOVETT. Yes.

Mr. ESCH. Notwithstanding the fact it may extend into another State or into another United States judicial circuit; that has already been determined by the Supreme Court?

Mr. LOVETT. Yes. I do not understand, however, that a State court can take jurisdiction of that portion of the carrier's lines extending beyond the territorial bounds of the State.

Mr. ESCH. It is true it has no extra-territorial jurisdiction?

Mr. LOVETT. It has none.

Mr. ESCH. In appointing receivers, who makes the application?

Mr. LOVETT. If it is in a suit by creditors, the application is made usually by the complainant in the case. If it is in a suit by the State against a corporation created by it, the application is made by the State as complainant. I have known of many such cases.

Mr. ESCH. Well, where the State guarantees the bonds, for instance, or has a direct pecuniary interest in the securities of the company, the State could do that?

Mr. LOVETT. The State would have the same right as any other litigant. I do not know of any such case, but there may be cases.

Mr. ESCH. There is no law and no custom as to the amount of securities or security that may be represented by the applicant for a receivership?

Mr. LOVETT. There is not. One of the famous receivership cases of a railroad company was based upon a pending suit for damages over a telegram, which was charged to the railroad company in some way; and by reason of that unliquidated claim application for a receiver was made to a State court and was granted, and some thousand or fifteen hundred miles of railroad was put into the hands of a receiver, where it remained for a number of years.

Mr. ESCH. That fact leads me to ask this question: Ought there, therefore, not be some statute that would make it a condition precedent to the granting of an application or to the permitting of an application for a receivership? Should receiverships be allowed on inconsequential causes that will enable the applicant to tie up, as you say, a great system?

Mr. LOVETT. I should say no; that ought not to be permitted.

Mr. ESCH. That, therefore, there ought to be some regulation?

Mr. LOVETT. I should think so. If you are going to make it exclusive, I believe under the existing statutes of the United States courts, as courts of equity, that such matters are fairly well guarded. But the power of some of the States over the corporations they create, by virtue of the fact that they are the creatures of the State to put them into the hands of receivers, is one of the dangerous factors in the situation.

Mr. ESCH. And you think that ought to be safeguarded?

Mr. LOVETT. Yes; I think that would be one effect of the Federal incorporation of railroads. I have to go back again to Texas for an illustration, and you can find there a precedent for almost anything in railroad regulation. All companies operating in Texas, except the Texas & Pacific, are creatures of the State of Texas, and one of the favorite and most popular methods of coercion, if I may use that term, of Texas railroads is the threat of a quo warranto proceeding to forfeit the charter. Such proceedings are brought by the attorney general of the State in the district court at the capital of the State, and they can be summary to a very large extent. Any railroad corporation of Texas is liable at any time to find itself in the hands of a receiver.

Mr. ESCH. But that does not obtain in any other State, does it?

Mr. LOVETT. I do not know to what extent it is actually practiced in other States. It is just as possible in any other State as in the State of Texas.

Mr. ESCH. In an application for a receivership notice is not given to the stockholders or to the security holders, as a rule, is it?

Mr. LOVETT. No.

Mr. ESCH. Do you see in that a defect in the present practice? Should their interests not be safeguarded by having an opportunity of appearing before the receivership is granted and before the order is made?

Mr. LOVETT. I do not see any need of giving notice to the stockholders, as such, or to the bondholders, as such, because notice to the corporation, its president, or secretary, or its directors, is notice, and ought to be considered notice so far as the stockholders are concerned. As to the bondholders, notice to the trustee should be considered notice to the bondholders.

Mr. ESCH. Yet, if I remember rightly, the Grand Trunk got a receivership for the Vermont Central without even the president of the Vermont Central knowing anything about it. Receiverships are gotten overnight. They have been granted at 2 o'clock in the morning. They have been very summary proceedings; no notice. Do you think that that practice should be continued or should it be safeguarded?

Mr. LOVETT. I think that in an action by creditors the present arrangement is sufficient so far as the Federal court is concerned. I am not familiar with the practice of the various States. But the other practice as to public proceedings for receiverships by the States for the alleged abuses of corporate franchises and functions may be an injustice.

Mr. ESCH. As a rule who are appointed receivers by the courts?

Mr. LOVETT. Are you asking now about the Federal courts as distinguished from the State courts?

Mr. ESCH. No; the Federal courts; for I think the great majority of these cases go before the Federal courts.

Mr. LOVETT. The great majority of the cases involving insolvency, I think, do go to the Federal courts. That practice varies. I notice in recent years the president or the chief operating officer of the railroad system generally is appointed receiver. Sometimes there are two or more receivers appointed, in which case some man known personally to the judge of the court is appointed as coreceiver.

Mr. ESCH. Is it the modern practice to appoint as one of the receivers a man versed in railroad matters?

Mr. LOVETT. Yes; that has been my observation.

Mr. ESCH. And do the bondholders generally have a representative in receiverships?

Mr. LOVETT. Frequently.

Mr. ESCH. They are appointed, however, without any action of the security holders or of the stockholders?

Mr. LOVETT. Generally at the instance of the trustee.

Mr. ESCH. Of the trustee; yes.

Mr. LOVETT. Take the receiverships that exist now as far as I recall them. Take Missouri, Kansas & Texas Railway; Mr. Schaff, who was the president and chief operating officer of that company, was appointed receiver, and I believe is the only receiver of the system. In the Frisco receivership the chief operating officer was appointed receiver, and I believe a merchant or a banker or some man residing in the same town with the judge who made the appointment, a well-known man, I assume, to the judge, was appointed coreceiver. In the Wabash receivership the chief operating officer was appointed receiver with an individual who is not a railroad man, but who, I presume, was well known to the judge was appointed. I think that is true of all the receiverships I recall now. In each

instance an operating man was appointed as receiver and really directed the operation of the railroad.

Mr. ESCH. But, as a rule, one of the two receivers is an officer of the company itself?

Mr. LOVETT. Yes.

Mr. ESCH. And possibly one of the executive officers?

Mr. LOVETT. Yes; but generally he is not a man who has any material interest in the property. He is a salaried man.

Mr. ESCH. But he may have been one through whose mismanagement or want of judgment the company may have been thrown into a receivership?

Mr. LOVETT. That is a possibility, but I should say it is highly improbable. I do not know of such a case and have not known of such a case.

Mr. ESCH. When a receivership is threatened, and before application therefor, it is customary to have a reorganization committee named?

Mr. LOVETT. At or before the receivership?

Mr. ESCH. Yes.

Mr. LOVETT. No; I have never known of such a case. There may be such, but I have never known of a case where a reorganization committee was named before the receivership occurred.

Mr. ESCH. Well, if not before, immediately thereafter?

Mr. LOVETT. I would say as to that, Mr. Esch, the practice now seems to be that as soon as a receiver is appointed there is a very active industry in organizing protective committees. I am speaking simply of my observation of these things. Let a large railroad system get into the hands of a receiver, and within the next day or two there is a protective committee on behalf of one class of bonds and a protective committee on behalf of another, and a protective committee on behalf of some division mortgage, and a protective committee on behalf of the common-stock holders, and a protective committee on behalf of the preferred-stock holders. It seems to be a very popular occupation—and then sooner or later those committees get together on some one committee as a reorganization committee. Sometimes a reorganization committee is selected from these various groups and they try to reconcile their differences, but generally all of them are in at the death.

Mr. ESCH. As a rule some great banking house acts as the manager, does it not?

Mr. LOVETT. It is not always a great banking house, but for successful reorganization they generally get a great banking house.

Mr. ESCH. And then they ask for a deposit of securities, do they not?

Mr. LOVETT. Generally each protective committee calls for the deposit of securities, which it purports to represent. They all start out with the usual statement:

Having been requested by the holders of large amounts of certain securities to act as a protective committee, you are invited to deposit your securities with a trust company and receive negotiable trust certificates, which will be listed on the stock exchange, etc.

When the reorganization committee gets control, all of the securities deposited are taken care of in the reorganization. Sometimes some of them are not taken care of.

Mr. ESCH. I was going to ask, what is the penalty for a security holder who does not file with one of these protective reorganization committees?

Mr. LOVETT. I do not know of any such. Sooner or later they will all come in.

Mr. ESCH. I think in the case of the Pittsburgh-Wheeling Terminal Co.'s affairs, which were presented before our committee two years ago, there were several protective committees, and there were a large number of minority stockholders who contended they were practically left out in the cold.

Mr. LOVETT. I understand this to be the course: Suppose you are a stockholder, or you are a bondholder, and you decide not to deposit your securities and go into the reorganization. Unless you organize a committee of your own, or individually are able to pay a higher price for the property than the others pay, you may be sold out; you may be left out. I do not myself see, so far as the deposit of securities and cooperation of a certain class of security holders are concerned, any harm. If some man is stubborn and is not willing to take the same his fellow security holders take, why, he can buy the property, if he is able, and if he is not able, he will be left out.

Mr. ESCH. Of course, that is the trouble. The minority stockholders have not the financial means and can not get the financial companies of the country to maintain their rights. They have got to come in as a matter, perhaps, of protection. They have no alternative.

Mr. LOVETT. I do not know of any way of solving the problem, Mr. Esch. Take my own case: I, unfortunately, have but a few investments, but I did have bonds of an insolvent railroad company, not a great while ago. I prefer not to call any names. I thought those bonds were good and I believe yet they were good. But a plan of reorganization was agreed upon which involved the taking of less than I thought my bonds were worth. It was a concession to an inferior bond or inferior mortgage that could prolong the receivership and delay the reorganization a very long time. The reorganization committee considered that the wisest thing to do was to make concessions. So they made concessions that I personally should not have made, and I would have fought it out. But I do not criticize the reorganization committee for that, for perhaps I was more belligerent and in a position better able to await a long contest than many other of the security holders, but if it had been left to me personally I should have fought it out. If I had had money enough to buy the property, I would have fought it out on my own account, but as I should have had to raise something like \$60,000,000 I gave it up.

Now, that is true of a great many people who go into these reorganizations. It takes a very large amount of money to swing a big railroad reorganization, and unless a man is willing to go along with others similarly situated it is up to him to swing it by himself.

Mr. ESCH. Is that one reason why in recent times the great banks have got such a dominant hold upon the railroads of the country—through reorganizations?

Mr. LOVETT. I do not believe the great banks have gotten a dominant hold on the railroads of the country. I believe the railroads are at this time far and away more independent of bank control or

any other control than that of the principal officers than they ever have been in the history of the country.

Mr. ESCH. Do not these reorganization committees, after they have gotten in all the securities they can, reorganize and issue new securities and then establish a voting trust?

Mr. LOVETT. That has been done by a number of banking institutions.

Mr. ESCH. Was not that true of the Union Pacific?

Mr. LOVETT. A voting trust? I do not recall any voting trust. If there was one, it did not last very long.

Mr. ESCH. Through Kuhn, Loeb & Co., as reorganization managers, was it not true as to the Southern, when Morgan & Co. were reorganization managers and Morgan & Baker were made the voting trustees?

Mr. LOVETT. First, in reference to the Union Pacific, I was not connected with the property at the time of the reorganization. My connection with the Union Pacific commenced January 1, 1904. It was reorganized, I think, in 1897 or 1898; but if any voting trust was created, it existed for a very short time and was not in existence when I went with the company.

I do not know as to the case of the Southern any more than hearsay.

Now, I believe voting trusts are usually created for a short time, and I think it eminently wise and proper. It ought not to be continued, however, very long. But a banking firm, a reputable banking firm that reorganizes a railroad property, wants to select the management itself to start with and wants to keep control of it for a short time, anyway, and when it is firmly on its feet they usually dissolve.

I understand, simply as a matter of public report in the newspapers, that the voting trust of the Southern and the voting trust of a number of the Morgan reorganizations was dissolved some years ago.

Mr. ESCH. Well, the Southern voting trust was in existence in 1913 when the Monetary Trust Commission made its report.

Mr. LOVETT. I think a number of them were dissolved about that time. There had been a number continued for some years. But so far as my actual knowledge is concerned no railroad company with which I am connected has had any voting trust, and I am a director of a number.

Mr. ESCH. Now, all this matter with reference to the voting trust, with reference to the reorganization committee, is extrajudicial, is it not?

Mr. LOVETT. Yes.

Mr. ESCH. And the court that has jurisdiction over the receivers has nothing to do whatever with this voting trust or with the reorganization committee?

Mr. LOVETT. That is true.

Mr. ESCH. Do you believe that is a safe situation?

Mr. LOVETT. I do. I believe it is the only possible situation. I believe that sometimes, probably in the Union Pacific, I am not sure, reorganization plans have been submitted to and approved by the courts, but it does not strike me that it is a matter with which the

court ought to have anything to do. The issuance of securities, capitalization, under Government regulation is a matter of governmental authority. The Interstate Commerce Commission should be vested with jurisdiction over such matters. I do not think the courts should control it.

Mr. ESCH. Are you familiar with the English Companies Act, that deals with receiverships?

Mr. LOVETT. I am not.

Mr. ESCH. That gives power to the stockholders and the security holders in the matter of selection of the receivers. Three-fourths of each class of security holders voting for receivers puts them into office, and they also have the right to vote on the reorganization plan. There is nothing, under our practice, that permits them to vote on the reorganization plan, is there?

Mr. LOVETT. No; I think it would be extremely unwise to allow that.

Mr. ESCH. Yet the English system seems to have been working for some years, and working practically?

Mr. LOVETT. Well, if we ever have in the railroad affairs of this country the freedom in railroad matters the English security holders have, it might be different, but we do not expect that; and even though it is an English practice well established I think it would be extremely unwise.

I will state briefly my reasons: If the reorganization plan is to be subject to the approval of the security holders—the stockholders who may be foreclosed and cut off, or the second, third, or fourth lien holders, who may be cut off by the foreclosure, it will render the first liens valueless and destroy the credit and ability of railroad companies to raise money by first liens, or will indefinitely prolong and delay the reorganization. Or, to use more expressive terms, the class of security holders who are to be foreclosed will hold up the others and force concessions to which they are not in law or equity entitled. The stockholder of a railroad company has a security that is inferior to the bonds and the way for him to protect his interest is to pay the bonds. Now, he ought not to be put in a position where he can destroy the value of the bonds on which his company borrowed money or impair the value of the security ahead of him by delaying or interrupting a reorganization plan.

Mr. ESCH. Under the English system there is no sale; the property owners get possession of their property again and go on. Under our system, of course, we have a sale and the securities that are deposited with the reorganization committee are turned in by way of purchase, are they not? Is not that true?

Mr. LOVETT. As to the first part of that question, Mr. Esch, I can not comprehend any system that does not permit the foreclosure of a mortgage and the sale of the property to satisfy it. Therefore I can not say anything of value upon that aspect. As to the latter part of the question about the disposition of the securities: Holders of old securities deposited with the various protective committees and ultimately with the reorganization committee, and to be taken care of in the reorganization, receive new securities in exchange upon such basis as the reorganization plan provides. They either keep them or sell them, as they like.

Mr. ESCH. Do you believe it would be wise to give the Interstate Commerce Commission certain powers with reference to receiverships?

Mr. LOVETT. I do not see any advantage that would be gained by giving the Interstate Commerce Commission any duties with respect to receiverships. But if you mean with reference to reorganizations and the issue of securities in carrying out a plan of reorganization I should say that as long as we are all committed to governmental regulation of securities the Interstate Commerce Commission ought to be given exclusive jurisdiction to pass upon the issue of securities in connection with a reorganization plan, just as they should be given exclusive jurisdiction to regulate the issue of railroad securities for any other purpose.

Mr. ESCH. You think they should be given the power to pass on the plan of reorganization?

Mr. LOVETT. They must necessarily consider the plan of reorganization in passing upon the issue of securities. The plan of reorganization involves a very large question of finance and of relative values. It is not a question as to what some one would like to do but what can be done. Now, to put the commission in a position to say: "Give the first mortgage certain securities, give the second mortgage certain securities, give preferred stock certain securities, and give common stock certain securities," would not only result in an impossible condition in many cases and prolong and delay the reorganization but it would be of very doubtful constitutionality. The holders of bonds are entitled, in the absence of agreement on their part, to foreclose their liens and take the property at foreclosure sale if they are not paid; and that is a right that nobody can or should take away from them; and any law that attempted to authorize the Interstate Commerce Commission to compel the holder of a first mortgage to concede something to the holder of a second mortgage bond, or to stock, would, I think, be unconstitutional.

Mr. ESCH. Should there be anything in the law fixing the period or the duration of a receivership?

Mr. LOVETT. No.

Mr. ESCH. That has to depend upon the exigencies of every case?

Mr. LOVETT. Yes; and the security holders are just as eager as any people can be to have the receivership ended, because usually their interest is suspended during the receivership.

Mr. ESCH. Yet, as a matter of fact, there have been receiverships that have extended over six or seven years?

Mr. LOVETT. Yes.

Mr. ESCH. In one instance, I think, 20. There can be abuse in that?

Mr. LOVETT. Yes; but there is another case of burning the barn to catch a few rats.

Mr. ESCH. Yes.

Mr. LOVETT. There will be evils in any system that can be devised, but I do not know, so far as my observation goes, of any case of a receivership where it was a creditor's bill that has been prolonged. The cases of prolonged receivership I know were what I call "political receiverships," to keep some people in desirable positions.

Mr. ESCH. That leads me to ask this question: Is there any justification for the criticism that the fees in receivership cases are exorbitant?

Mr. LOVETT. I think there is.

Mr. ESCH. Is there any way in which you could reach that through legislation?

Mr. LOVETT. Yes.

Mr. ESCH. What would you suggest?

Mr. LOVETT. Why, I think that when you invest the commission with power to regulate securities you very largely curb that. As far as I know, the cases in which receivers get excessive or unreasonable compensation are very rare, but there have been such cases.

Mr. ESCH. Mr. Hamilton suggests that he would like an elaboration of what you mean by "political receiverships."

Mr. LOVETT. I do not like to call names, but a case I have in mind is where the receiver was appointed for the nondelivery of a telegram, and where a number of men very prominent in politics were appointed receivers and receivers' counsel and masters in chancery and other similar positions, and the reorganization was delayed. It is perhaps fair to say that in that case the receivership was probably precipitated by the efforts of a large creditor, who was supposed also to be a large stockholder, to get a receivership of his own, and, to use a slang expression, "the others beat him to it."

Mr. ESCH. Of course, receivers would be interested in retaining their office as long as possible?

Mr. LOVETT. Yes.

Mr. ESCH. Because, as a rule, the courts have been very liberal in their allowances to receivers, have they not?

Mr. LOVETT. I would not say that they have been unduly liberal. I do not know of receivers who, as such positions go, and if they properly perform their duties, have been unduly paid.

Mr. ESCH. As to those matters, the stockholders—the owners of the property—have little or nothing to say? The court passes, of course, upon these fees and charges?

Mr. LOVETT. Yes.

Mr. ESCH. But the property owners have really no voice in the matter?

Mr. LOVETT. No; I do not see how they can have. You have got to trust the court. There has been criticism of practices——

Mr. ESCH. There have been protests filed against reports of receivers and criticisms made of various items of their accounts?

Mr. LOVETT. Yes.

Mr. ESCH. And a hearing had by the court in that way?

Mr. LOVETT. Yes. I have never known a case where any creditor who wanted to object to a receiver's allowance, or his counsel, so far as they were fixed by the court, has not had an opportunity to be heard. Sometimes the objections have been sustained. Those matters are usually covered, however, as far as my practice has gone, by agreement. Counsel representing the various interests involved, which would have to bear the burden, have conferred about it and have agreed, or the matter has been determined by the court. The allowances and payments over which the court has no control are

those made by the reorganization committee, or by these various protective committees.

Mr. ESCH. They sometimes have been very large?

Mr. LOVETT. I have a great many neighbors and friends who act in that capacity or who have acted in that capacity. I would dislike to say anything that would indicate they have been unduly very liberal.

Mr. ESCH. Recurring to the subject of the voting trust, as I stated, the voting trustee is generally a representative of some of the big banking houses in the country, in these that I have alluded to.

Mr. LOVETT. Well, the way that is generally handled, Mr. Esch, is this: After the various protective committees have organized themselves and selected their chairmen and their membership and their counsel, and the trust company which is to act, and filled all the positions, and have had a number of conferences and put in more or less time, they realize that the different interests will either have to organize and come to an agreement on a plan of reorganization or fight it out in court, which will take a long time. Then some banking house that has the standing with investors and the financial ability to put through the plan is called in and works out a plan that it is willing to underwrite. The plan is then submitted to the various committees, and if they approve and the bankers are engaged to undertake the underwriting they form a syndicate, the size of which generally depends upon the size of the undertaking. The banking firm designate themselves as "reorganization managers" or "syndicate managers," and invite various people of means—mostly large, but some of small, means—and various bond houses who sell and distribute securities, to take a share in this syndicate. The syndicate shares run all the way probably from \$25,000 to \$1,000,000 or \$10,000,000. I have known them to run as high as \$10,000,000. The syndicate interest is widely distributed. The banking house itself usually, as I understand, taking a very small interest itself; but it is the credit of the house and the character of the house that enables it to put through these big undertakings.

There may be thousands of people who will buy some of these securities simply because this banking house has organized the syndicate and is the manager of the reorganization. Then, the banking house generally feels, and very properly, a degree of responsibility not only to the syndicate but to all of its customers for the proper management of the road, and generally they either dictate the management or form a voting trust for four or five years, with power to dissolve it earlier if the reason ceases. I do not know any large banking house that wants to run a railroad; they have a business of their own. But naturally they feel a responsibility for the successful management of a company they have put on its feet, and they like to keep in pretty close touch and to select the management. A voting trust may continue—in some cases they go on for years, but generally they are of rather short duration, so far as my experience goes. Different banking houses have different policies with respect to that; some are more insistent upon holding on with the voting trust for the full term of it—usually five years—than others.

Mr. ESCH. Would the surrender of the voting privilege by stockholders, under the reorganization, to the voting trustee give the voting trustee power in case of combination of systems?

Mr. LOVETT. The power to bring about a combination?

Mr. ESCH. Yes.

Mr. LOVETT. Yes; the voting trustee acts for the stockholder, and he votes without consulting the stockholder.

Mr. ESCH. Yes; he has the whole privilege?

Mr. LOVETT. Yes. I should like to say one further word with reference to the voting trust, if I may.

Mr. ESCH. All right. Certainly.

Mr. LOVETT. One of the greatest, and to my mind the great necessity for a voting trust, is that when the company is reorganized and the stock is issued, the common stock is sufficient to control; it is the last security, and, generally, at the outset, it will sell for a very low price—10 or 15 or 20 or 25 or 50 cents on the dollar—and it affords a great opportunity, if there be no voting trustee, for some plunger or group of speculators to get the stock and take over at once the management of this reorganized enterprise for purely speculative purposes; whereas the bankers or the syndicate managers with the voting trust, in adopting the plan, naturally believe it will be successful and that with a few years' trial success will be demonstrated and the stock will rise. In the meantime, with a voting trust it will not be so easy for speculators or plungers to get control of the company through the purchase of the stock while it is very low. It is really done for the protection of the stockholders as well as the other security holders. While it is true voting-trust certificates are salable, yet to the average speculator nothing running four or five years has any attraction; he wants to get something he can turn over. He does not care much for a voting-trust certificate which will not give him control of the property but will simply represent his investment for four or five years. That, I think, is one of the sound reasons in favor of voting trusts for reorganized companies for a reasonable time.

Mr. ESCH. Has the tendency of late been for great railroad systems to invest in the securities of other systems?

Mr. LOVETT. If you mean by "lately," the last——

Mr. ESCH. Say, 10 years.

Mr. LOVETT (continuing). The last 10 years, I should say no.

Mr. ESCH. Before this last decade, was there quite a tendency in that direction?

Mr. LOVETT. Undoubtedly very great.

Mr. ESCH. What was the main purpose for such investment?

Mr. LOVETT. The Union Pacific, I suppose, was about the most conspicuous company that followed that policy; and a variety of purposes entered into and influenced it. I should say that the purpose of the earlier investments was to strengthen the position of the company with respect to traffic, and to extend the system. Other reasons entered into it. One was to prevent the acquisition by a rival line of the control of some property that would be very hurtful to the Union Pacific in the hands of the rival line. The purchase of the Southern Pacific control by the Union Pacific was, of course, for the

purpose of getting an outlet to the Pacific Ocean. At that time the shipper did not have any right to route his traffic; the line on which it originated absolutely controlled it. It could send it to any connecting line it chose; and the Union Pacific was wholly dependent on the Southern Pacific for such traffic as the Southern Pacific saw proper to give it at Ogden. That condition has changed, and was changed by the law that gave the shipper the right to route his traffic; and it was changed by the construction of another line of railroad to the Pacific coast, and then by fiercer competition by other lines with the Southern Pacific, and greater improvements to the short and direct line, and other considerations; though it is still vastly important to the Union Pacific. Then, there was the Northern Pacific purchase, the object of which was to prevent, as I understand, a combination of the Northern Pacific and the Great Northern for the control of the Burlington, in the interest of those companies and against the interest of the Union Pacific. Without taking too much time in relating these transactions, those were the large purchases.

Now, following that the Union Pacific failed, for reasons I need not take the time to go into, to get control of the Northern Pacific; so the Northern Pacific and the Great Northern combination, which brought the control of the Burlington into those two systems, was formed and still exists. Those two systems to-day control the Burlington. The Union Pacific, as it could not get control and could not achieve the purpose it sought to accomplish, sold the Northern Securities stock which it took in exchange for Northern Pacific, and then both the Northern Pacific and the Great Northern that it took upon the dissolution of the Northern Securities Co., and made a very large profit. The convertible bonds which had been issued by the Union Pacific to raise money for these stock purchases (the Union Pacific stock having risen) were converted into stock of the Union Pacific. So the Union Pacific had the proceeds of this Northern Pacific purchase and a profit of about \$58,000,000 on the transaction, which it proceeded to invest in other stocks. It bought Baltimore & Ohio stock; it bought New York Central stock; it bought some Atchison, Topeka & Santa Fe stock; it bought some Chicago & Alton stock—preferred stock—and various other stocks. It sold the Atchison stock, because that owned a competing line, although the amount was comparatively small—only \$10,000,000, I believe, out of a total of over \$200,000,000. After it lost control of the Southern Pacific it distributed the Baltimore & Ohio stock to its stockholders as an extra dividend. I forgot to say that it also bought Illinois Central stock in large amounts. Now, the stock buying or stock purchasing substantially ceased following 1907, when the great attack was made on the Union Pacific by the Interstate Commerce Commission through the investigation made at that time, or, as I always describe it, the “attack on Harriman.” Mr. Harriman died in 1909, and the policy since then has been not to invest in railroad stocks as a rule, but rather in bonds, and to avoid speculative securities.

The only stock I recall now that we have bought since 1909 was some additional New York Central stock. We increased our holdings from about seventeen millions of New York Central stock to twenty millions out of a total of three hundred and fifty million

dollars, and we have exercised our subscription rights with respect to stock of these companies in which we were already interested. Where a corporation would increase its stock, and we had the right to subscribe at par, and the stock was worth more than par, we exercised our subscription rights. If the stock was less than par we were likely to buy the amount we are entitled to subscribe at par, where we could buy it at less than par, keeping up our relative position.

Mr. ESCH. I notice all the way through your investments were in stock and not in bonds.

Mr. LOVETT. I beg your pardon?

Mr. ESCH. I say I notice all the way through that your investments were in stock and not in bonds of other companies.

Mr. LOVETT. No; I did not mean to convey that impression. We have bonds as well as stock, and at this time we have over \$100,000,000 of bonds.

Mr. ESCH. And how much of the stock of other companies?

Mr. LOVETT. Mr. Each, if you will permit me, I would like to hand in a table.

Mr. ESCH. Very well; you can do that.

Mr. LOVETT. That will show exactly the stock and bonds, rather than give them from memory.

(The tables referred to were handed in and are here inserted, as follows, viz:)

*Securities owned.*

AFFILIATED COMPANIES.

Companies.	Total par value outstanding June 30, 1916.	Amount owned.
<b>STOCKS.</b>		
<b>Terminal and transportation:</b>		
Camas Prairie Railroad.....	\$100,000	\$50,000
Denver Union Terminal Railway.....	30,000	5,000
Kansas City Terminal Railway.....	1,200,000	100,000
Leavenworth & Topeka Railway.....	50,000	25,000
Leavenworth Depot & Railroad.....	150,000	\$62,500
Ogden Union Railway & Depot.....	300,000	150,000
Pacific Fruit Express.....	10,800,000	5,400,000
St. Joseph & Grand Island Railway—		
First preferred.....	5,499,400	4,558,850
Second preferred.....	3,500,000	3,309,079
Common.....	4,600,000	4,239,700
San Francisco & Portland Steamship.....	500,000	500,000
San Pedro, Los Angeles & Salt Lake Railroad.....	25,000,000	12,500,000
Yakima Valley Transportation.....	500,000	500,000
<b>Coal:</b>		
Union Pacific Coal.....	5,000,000	5,000,000
<b>Land:</b>		
Oregon & Washington Railroad.....	1,000,000	999,300
Riverside Homestead.....	100,000	100,000
Short Line Land and Improvement.....	100,000	50,000
Union Land.....	10,000	10,000
<b>Water:</b>		
Green River Waterworks.....	225,000	225,000
Rattlesnake Creek Water.....	78,300	78,300
Union Pacific Water.....	100,000	100,000
<b>Miscellaneous:</b>		
Colorado-Pacific Development.....	1,000,000	549,750
McKeen Motor Car.....	1,000,000	530,000
Union Pacific Equipment Association.....	100,000	100,000
<b>Total.....</b>		<b>39,162,479</b>

## Securities owned—Continued.

## AFFILIATED COMPANIES—Continued.

Companies.	Total par value outstanding June 30, 1916.	Amount owned.
BONDS AND NOTES.		
Terminal and transportation:		
Denver Union Terminal Ry.—		
First-mortgage 4½ per cent bonds, due Mar. 1, 1964.....	\$4,000,000	\$4,000,000
Kansas City Terminal Railway—		
2-year 5½ per cent notes, due Nov. 30, 1917.....	2,000,000	2,000,000
1-year 6 per cent notes, due Nov. 30, 1915.....		
Leavenworth & Topeka Ry.—		
First-mortgage 4 per cent bonds, due Jan. 1, 1980.....	250,000	125,000
Demand notes, 4 per cent.....	377,286	188,643
Leavenworth Depot & R. Ry.—		
First-mortgage 5 per cent bonds, due June 1, 1922.....	137,600	57,000
Northern Pacific Terminal—		
First-mortgage 6 per cent bonds, due Jan. 1, 1933.....	2,968,000	182,000
Ogden Union Railway & Depot—		
First-mortgage 5 per cent bonds, due Sept. 1, 1918.....	326,000	162,000
Portland Terminal Investment—		
Certificate of indebtedness, due Dec. 21, 1915.....	2,899,047	2,899,047
St. Joseph & Grand Island Ry.—		
First-mortgage 4 per cent bonds, due Jan. 1, 1947.....	4,000,000	108,000
Demand notes, 5 per cent.....	274,900	274,900
Demand notes, 6 per cent.....	59,154	89,154
San Francisco & Portland Steamship—		
Purchase money notes, 6 per cent, due June 1, 1932.....	275,000	275,000
San Pedro, Los Angeles & Salt Lake R. Ry.—		
First-mortgage 4 per cent bonds, due July 1, 1961.....	57,053,000	28,526,000
Note due Jan 1, 1916, 5 per cent.....		
Coal:		
Union Pacific Coal—		
First-mortgage 5 per cent bonds, due May 1, 1921.....	5,000,000	2,473,000
Water:		
Green River Waterworks—		
First-mortgage 6 per cent bonds, due Jan. 1, 1919.....	194,000	194,000
Rattlesnake Creek water—		
First-mortgage 6 per cent bonds, due July 1, 1920.....	146,000	146,000
Total.....		41,685,744

## OTHER COMPANIES.

Companies.	Maturity.	Par or face value.
STOCKS.		
Baltimore & Ohio Railroad:		
Common.....		\$3,894,065
Preferred.....		1,805,963
Chicago & Alton Railroad:		
Preferred.....		10,343,160
Chicago & North Western Railway:		
Common.....		4,018,700
Chicago, Milwaukee & St. Paul Railway:		
Preferred.....		1,845,000
Illinois Central Railroad:		
Capital.....		22,500,000
New York Central Railroad:		
Capital.....		30,000,000
Railroad Securities Co.:		
Common.....		3,484,320
Preferred.....		1,936,300
Total.....		69,336,647
BONDS, NOTES, AND EQUIPMENT.		
Trust certificates:		
Baltimore & Ohio Railroad—		
Refunding and general mortgage, series A, 5 per cent bonds.....	Dec. 1, 1995	4,000,000
Southwestern division, first mortgage 3½ per cent bonds.....	July 1, 1925	2,000,000
4½ per cent secured gold notes.....	June 1, 1916	
Equipment trust 4½ per cent.....	1917-1923.....	511,000
Chesapeake & Ohio Railway—		
Equipment trust 4½ per cent.....	1916-1926.....	1,240,000

## Securities owned—Continued.

## OTHER COMPANIES—Continued.

Companies.	Maturity.	Par or face value.
Trust certificates—Continued.		
Chicago & Alton Railroad—		
General mortgage 6 per cent bonds.....	July 1, 1932	\$8,417,000
1-year 6 per cent notes.....	Apr. 29, 1917	450,000
Do.....	June 1, 1916	
Equipment trust 4 per cent.....	1916-17.....	429,000
Equipment trust 4½ per cent.....	do.....	246,000
Equipment trust 5 per cent.....	1916.....	72,000
Chicago & Northwestern Railway—		
General mortgage 4 per cent bonds.....	Nov. 1, 1987	2,000,000
General mortgage 5 per cent bonds.....	do.....	2,500,000
Equipment trust of 1912, 4½ per cent.....	1916-1923.....	697,000
Chicago, Milwaukee & St. Paul Railway—		
Convertible 4½ per cent bonds.....	June 1, 1932	387,400
Convertible general and refunding mortgage 5 per cent bonds.....	Jan. 1, 2014	230,000
General mortgage 4½ per cent bonds.....	May 1, 1989	1,857,000
General and refunding mortgage 4½ per cent bonds.....	Jan. 1, 2014	2,500,000
Chicago, St. Paul, Minneapolis & Omaha Railway—		
5 per cent debenture gold bonds.....	Mar. 1, 1930	1,000,000
Chicago Union Station Co.—		
First mortgage 4½ per cent bonds.....	July 1, 1963	500,000
Delaware & Hudson Co.—		
20-year convertible 5 per cent bonds.....	Oct. 1, 1935	500,000
4 per cent 10-year gold debenture bonds.....	June 15, 1916	
Erie Railroad—		
3-year 5½ per cent collateral trust gold notes.....	Apr. 1, 1917	1,000,000
Florida East Coast Railway—		
5 per cent equipment trust, series A.....	1917-1922.....	210,000
Hocking Valley Railway—		
1-year 6 per cent gold notes.....	Nov. 1, 1915	
Equipment trust, series of 1914, 4½ per cent.....	1917-1924.....	640,000
Illinois Central Railroad—		
Equipment trust 4½ per cent.....	1917-1923.....	95,000
Equipment trust 5 per cent.....	1919-1923.....	33,000
Illinois Central R. R. & Chicago, St. Louis & New Orleans—		
First joint refunding mortgage 5 per cent bonds.....	Dec. 1, 1963	5,000,000
Lehigh Valley Railroad—		
General consolidated mortgage 4½ per cent bonds.....	May 1, 2003	605,000
Long Island Railroad—		
Equipment trust 5 per cent.....	1917-1924.....	838,000
Louisville & Nashville Railroad—		
Equipment trust 5 per cent.....	1919-1923.....	261,000
New York Central Railroad—		
Refunding and Improvement mortgage 4½ per cent bonds.....	Oct. 1, 2013	3,000,000
20-year 6 per cent convertible bonds.....	May 1, 1935	8,000,000
1-year 5 per cent notes.....	Jan. 22, 1916	
New York Connecting Railroad—		
First mortgage 4½ per cent bonds.....	Aug. 1, 1953	3,000,000
New York, New Haven & Hartford Railroad—		
Equipment trust 5 per cent.....	1917-1924.....	800,000
Norfolk & Western Railway—		
Equipment trust 4½ per cent of 1914.....	1916-1924.....	2,059,000
Northern Pacific-Great Northern—		
4 per cent joint (C., B. & Q. collateral) bonds.....	July 1, 1921	4,132,000
Pacific Mail Steamship—		
Purchase money notes.....	Aug. 19, 1915	
Pennsylvania Co.—		
4½ per cent gold loan.....	June 15, 1921	5,000,000
Pennsylvania Railroad—		
Consolidated mortgage 4½ per cent bonds.....	Aug. 1, 1980	1,000,000
General mortgage 4½ per cent bonds.....	June 1, 1985	2,500,000
3½ per cent convertible bonds.....	Oct. 1, 1915	
General freight equipment trust 4½ per cent.....	1917-1923.....	2,100,000
Southern Pacific Co.—		
4 per cent 20-year convertible bonds.....	June 1, 1929	927,000
4½ per cent 20-year gold bonds.....	July 1, 1929	66,000
4 per cent (Central Pacific stock collateral) bonds.....	Aug. 1, 1949	6,399,000
San Francisco Terminal, first mortgage 4 per cent bonds.....	Apr. 1, 1950	6,000,000
Equipment trust 4½ per cent.....	1916-1923.....	593,000
Southern Pacific Railroad—		
First refunding mortgage 4 per cent bonds.....	Jan. 1, 1955	14,563,000
Southern Railway—		
Equipment trust 4½ per cent.....	1916.....	
Utah Light & Traction—		
First and refunding mortgage 5 per cent bonds.....	Oct. 1, 1944	11,864,000
Miscellaneous.....		64,300
Total.....		110,291,300

Mr. ESCH. That will be satisfactory. I did not know but what the object in investing in the stock of another carrier was because stock carried the voting privilege.

Mr. LOVETT. No. I would not say that that was the object. It was with some companies, but generally the stock pays a larger return, if it is well selected, than bonds; and Mr. Harriman testified in his examination by the Interstate Commerce Commission, as to many of these stocks, except the Southern Pacific, that the stock was purchased for the return. He believed the stocks to be good, and that was the object. Of course, there are different degrees of conservatism, and some men will invest in railroad stock and take whatever chance there is involved in it, believing that, as to many stocks, the risk is extremely remote. Others believe the safe rule is to buy bonds; even though they pay a smaller return, they involve less risk.

Mr. ESCH. Just one or two other questions: You mentioned pooling several times in the course of your testimony. Pooling was, of course, abolished by law, and was abolished before the Hepburn Act in 1906. Do you favor pooling if under the regulation of the Interstate Commerce Commission?

Mr. LOVETT. I do not. I am strictly opposed to it.

Mr. ESCH. Any form of it?

Mr. LOVETT. I am opposed to any form of it. As there was a good deal said yesterday about my possible representative capacity, I will state that that is a matter that has not been considered by the committee of executives. I do not know their view. I stated, as to the general plan that we were proposing here for legislation, not only my own individual views, but I knew them to be the views of the advisory committee. With reference to this question as to pooling, I am expressing only my own view. I do not know what the view of the advisory committee is, but I have not heard anybody suggest pooling. Personally I believe it would be unwise.

Mr. ESCH. Even under regulation?

Mr. LOVETT. Yes.

Mr. ESCH. Why?

Mr. LOVETT. It would tend to unreasonably restrict competition, I think. It would tend, perhaps, to create what I call a "nuisance value" in certain railroads that do not have much of any other value. But in principle I believe in competition in the railroad service, not competition in rates. Competition in rates is impossible without discrimination and rebates, and nobody wants discrimination and rebates. But competition in service and facilities is, in my judgment, necessary to prevent stagnation in the railroad business.

Mr. ESCH. By "nuisance value" do you mean the power and ability of holding up?

Mr. LOVETT. Yes.

Mr. ESCH. Here is a situation: There are six lines from Chicago to St. Paul-Minneapolis—two lines under single management. There are four from Chicago to New York; there are five from Chicago to St. Louis. Every night at a given hour there are that number of passenger trains starting from Chicago to those respective terminals. None of them are full, but each has to maintain that service because of the competition of the other rival lines. Would it be possible to have a system of pooling that would enable two or three of those lines to do the passenger service and thus eliminate a certain degree of expense and possible waste?

**Mr. LOVETT.** No; I do not believe it ought to be allowed. I think that is foolish management; but at the same time I suppose it is absolutely necessary under existing law. But I believe the managers of those roads ought to be allowed to get together and, subject to the approval of the commission, agree, if they can, to reduce some of those trains.

**Mr. ESCH.** Could a like arrangement be made with reference to freight traffic?

**Mr. LOVETT.** Well, I do not know about that.

**Mr. ESCH.** The theory now is the largest possible haul per train. The ton-mile haul is the unit of measurement now, is it not?

**Mr. LOVETT.** My feeling about it is that there are certain evils in the present system that are evils; but I do not believe it is any more possible to get perfection in the railroad business than in any other. Some things we have got to bear; we can not help the choice of evils. I know a good many railroad men who, if they could get together and agree on freight schedules, would serve the public, and it would at the same time be to the interest of the railroads. There may be some, however, to whom I would not cheerfully trust a power of that sort. I believe, however, that it is very desirable that railroad officers should be allowed to get together and agree on such things, but without pooling and subject to the approval of the Interstate Commerce Commission.

**Mr. ESCH.** I have used up an hour, and I do not care to continue further.

**Mr. ADAMSON.** Considering the responsible positions held by the members of this committee, if this investigation shall result in nothing more than the education of the members of the committee it will be worth what it costs. Senator Townsend, have you some questions?

**Senator TOWNSEND.** I had some questions that I wanted to ask, but I have not been able to attend all the sessions, and I think possibly some of them have been covered already. I have several, however, that I would like to ask. I think if the railroads are to be condemned for their expensive terminal facilities, this committee may be condemned for its lack of them.

**Mr. SIMS.** Terminal practices.

**Senator TOWNSEND.** And we ought to get through with this if it is going to be of any particular value, and I should attend the hearings, so as not to duplicate any questions that may have been covered. I therefore shall ask only one or two questions, congratulating you on the fact—and possibly the country—that many of the committee are absent.

**Mr. ADAMSON.** You will violate the rule against levity if you don't mind.

**Senator TOWNSEND.** I wanted to ask you, Judge Lovett, if you can tell me, in connection with our proposition to study the question of railroad controversies, about what, in your judgment, will be the cost to the railroads of the country of the recent so-called Adamson Act?

**Mr. LOVETT.** That was very carefully figured last spring and summer, Senator, by the experts of the railroads in operating matters, and it was then said—and we all believe—that, based upon the same business as was handled during the year 1915, it would cost them

about \$60,000,000 a year—well, sixty-four millions, I think. Is that about the amount, Mr. Kruttschnitt—about sixty-four million?

MR. KRUTTSCHNITT. I think that was the estimate of the men; of the carriers it was nearly a hundred million.

MR. LOVETT. No. It was this: The pay, based upon the Adamson law as passed, was a little over sixty millions—\$64,000,000, I think. If the time-and-a-half overtime—the punitive overtime—was granted, which was in the original demand and which was nearly \$40,000,000, it would make a total of about \$100,000,000. But as punitive overtime was not granted, and was not embodied in the Adamson law, the amount, based on what was granted in the Adamson law, was estimated by the railroads at a few thousand dollars over \$60,000,000 a year. The men estimated it, so I understand, at \$30,000,000.

Senator TOWNSEND. The court having determined that that law is valid, the railroads will have no difficulty in establishing that extra cost as an additional reason for the raising of rates, will they?

MR. LOVETT. None whatever.

Senator TOWNSEND. As I understand it—it has been my theory, at least—most of these propositions are suggested by the railroads in order that that question may be determined as to whether that is a valid charge which they can make in asking for additional rates?

MR. LOVETT. Well, I do not understand, Senator Townsend, that there is any question about it being a valid reason for asking an increase in rates. If it had been done voluntarily there might have been some question about it; but, being in obedience to a law that is sustained by the Supreme Court, we have not felt there is any doubt about the justification for the increase in rates.

Senator TOWNSEND. That has been my explanation for the opposition to many of these measures, because if it is true that these are legitimate charges which the railroads have to meet, and the railroads are permitted to raise their rates to meet those additional charges, there could not be very much objection on the part of the railroads to these impositions, could there?

MR. LOVETT. Except this: That however legitimate and necessary they may be, in view of the time that is taken it is not an easy matter to get an increase in rates, however clear the case may be.

Senator TOWNSEND. But if the railroads were assured that they could get immediately the additional revenue needed for the additional burden they would not oppose it so strongly?

MR. LOVETT. Why, no. If they were going to be entitled to an increase in rates, and knew that they would get it, why, the railroads would not oppose it further than their sense of duty to the public required them to oppose it.

Senator TOWNSEND. It has seemed to me that one of the principal duties of the Congress and the committees of Congress is to look after the interests of the people; but in these controversies they are more likely sometimes to look after the interests of the immediate parties—the railroad owners and the railroad employees—and the people are to foot the bill.

MR. LOVETT. The people will always have to do that, Senator, sooner or later.

Senator TOWNSEND. I think I do not care to ask him any more questions, Mr. Chairman.

Mr. ADAMSON. I will call attention, in connection with Senator Townsend's question, to the language in the majority opinion of the court, if he has not read it, that they took full cognizance of what I said to you this morning—that the law requires you to run 12½ miles an hour and to do the work in 8 hours instead of 10.

Mr. LOVETT. Those men knew the most popular grounds upon which to base their contention.

Mr. ADAMSON. If you go to the commission on that proposition, you are going to encounter the trouble or there is going to be a contention that you could run those trains at that rate by properly loading them and making them of proper length, and that then there would be no additional expense, so far as operating those trains is concerned; and you may be met with the further question, if you are going to make an objection to the law, that it adds to your expense; that you could have made the same objection when they passed the 16-hour law, and stopped you from running 24 to 40 hours—that that increased the expense—but that is no answer to the humanitarian law.

Mr. LOVETT. The passing of the law removes from us the responsibility for the wisdom of it, of course.

Mr. ADAMSON. I understand that, but I am speaking about the raising of rates. If you ask for a raise in the rates on the ground that money is not worth half as much as it used to be, you will get it; but if you ask for an increase of rates on the ground that the finding of this commission puts an additional burden upon you, on account of the eight-hour law, I do not think you will get it.

Mr. LOVETT. If we can not demonstrate an increase in expenses, of course we are not entitled to an increase in rates on account of it.

Mr. ADAMSON. We have a commission appointed to inquire into it.

Mr. LOVETT. Yes.

Mr. ADAMSON. In other words, I believe the railroads will find less difficulty if they try to comply with the law.

Mr. LOVETT. We are not going to try to do it; we are going to do it.

Senator CUMMINS. I think there is some misunderstanding here about the Adamson law. The railroads say—and I accept it for the time being—that if the Adamson law—that the wages required to be paid during the period of 10 months, if they should be paid continuously, the increase would be about \$64,000,000 per year; but the Adamson law only requires that you should pay those wages over a maximum period of 10 months, and you are then permitted to pay whatever wages you please. Why, then, do you insist that your expenses will be increased by this amount?

Mr. LOVETT. Because we know, Senator, that a fact is a fact, and we know, as a matter of fact, that when this Adamson law and this schedule are put into effect we can not change the schedule and operate the railroads.

Senator CUMMINS. That is, you know that you can not reduce the pay per hour?

Mr. LOVETT. No, sir; nor per mile.

Senator CUMMINS. Why can you not?

Mr. LOVETT. Because we would have a strike.

Senator CUMMINS. Oh, well; but not because you regard the reduced pay as unreasonably low?

Mr. LOVETT. No.

Senator CUMMINS. Simply because you are afraid of a strike?

Mr. LOVETT. Yes.

Senator CUMMINS. But the law does not require it.

Mr. LOVETT. I understand that the law leaves it optional after the expiration of this period.

Senator CUMMINS. Yes.

Mr. LOVETT. To continue the same rate of pay per hour or per trip.

Mr. ADAMSON. But the provision that there shall be nothing but necessary overtime allowed applies even during that period, and you may have to account for that when you get into the controversy.

Mr. ESCH. Has not the commission, in a ruling not very old, denied an increase of rates because of a claim of the carrier that its operating expenses were increased by yielding to a demand for increased pay by its employees?

Mr. LOVETT. There has been something said by the commission in such case as that. We all feel, Mr. Esch, that whenever we apply for an increase in rates all of our expenditures are open to question by the commission. We can not call on the commission to increase rates for mismanagement or because we pay more than we ought to pay. The reasonableness of it is all taken into consideration.

Mr. ESCH. Of course, that may not be a guide to the actual attitude of the commission now, because that was more of an isolated case and the demand now is country wide. I do not presume to say what the attitude of the commission would be in the present situation.

Mr. LOVETT. I understand the commission has the right, when we apply for an increase of rates to meet expenses, to go fully into the question of expenses. In this case the increase of wages, if we had made it voluntarily, would have been open to the commission, and it would have been very hard for us to justify it, because we believe that the increase is too much. But since Congress has determined that it shall be applied we do not consider that that is an open question.

Mr. ESCH. Of course, you have got to make your proof. There was one objection made to the last 5 per cent increase—that it was not really a matter of proof; that the commission yielded to the fact of the war conditions in Europe.

Mr. LOVETT. We understand that we have got to make our proof.

Mr. ESCH. Yes.

Mr. ADAMSON. The commission is very likely to ask you, when you go before them on that question, whether you have so operated the road since the enactment of that law as to prevent the expenses from getting so high.

Mr. LOVETT. If we can not establish that, we will not be entitled to an increase.

Mr. ADAMSON. I agree with you. That is all. Go ahead, Mr. Hamilton.

Mr. HAMILTON. I have one or two questions. They may have been covered. You have been called upon to express an opinion about every phase of the transportation subject except the question of

governmental ownership of railroads. I simply want to ask you three or four questions in relation to that.

Mr. LOVETT. I shall be very glad to answer them if I can.

Mr. HAMILTON. First, what is the line mileage in the United States of railroads—about?

Mr. THOM. About 260,000 miles.

Mr. LOVETT. About 260,000 miles.

Mr. HAMILTON. What would it cost for the Government to acquire those railroads? Have you estimated that?

Mr. LOVETT. Well, I think the capitalization of the railroads of the United States is now a total of about eighteen billions, is it not?

Mr. THOM. Somewhere in that neighborhood.

Mr. HAMILTON. It has been estimated by one witness, Mr. Brookhart, that it would cost fifteen and a half billions of dollars to acquire the railroads; but he cited another authority to the effect that it would cost sixteen billions.

Mr. LOVETT. I say "capitalization." I am not sure about that. I am not sure whether it is the capitalization or the property investment account. There is probably not a great difference between those two accounts; but it is somewhere about eighteen billions. About 35 per cent of the stock does not pay dividends, and at this particular time about 11 per cent of the bonds are in default. Now, a bond, undoubtedly, although in default, is valuable, though perhaps it is not worth par; so something would have to be allowed for them. The stock has some value, although not paying dividends; but I should guess roughly—and it would be merely a guess—that it would cost probably fifteen or sixteen billions of dollars.

Mr. HAMILTON. If the Government should undertake to acquire the railroads, would it be necessary for the Government to acquire the telegraph lines?

Mr. LOVETT. I should think it desirable.

Mr. HAMILTON. For use in the operation of the railroads?

Mr. LOVETT. Well, I suppose it would take over the rights of the railroad companies with the telegraph companies, which would cover the question of railroad operation.

Mr. HAMILTON. Would not that involve additional expense?

Mr. LOVETT. To take over the rights of the railroad companies with the telegraph companies?

Mr. HAMILTON. Yes.

Mr. LOVETT. No.

Mr. HAMILTON. Then you would not estimate any additional expense, so far as the telegraph lines are concerned, in the acquisition of the railroads?

Mr. LOVETT. So far only as telegraph lines are required in the operation of railroads, no.

Mr. HAMILTON. Would that apply also to telephone lines?

Mr. LOVETT. Yes. Do not misunderstand me. I do not mean that this would include the commercial telegraph business. I mean only the use of the telegraph lines so far as required in the operation of the railroads.

Mr. HAMILTON. I so understood you.

Mr. LOVETT. Yes.

Mr. HAMILTON. Have you had an opportunity for personal observation of the operation of government-owned railroads in Europe or elsewhere—personal opportunity for observation?

Mr. LOVETT. No; I am not familiar with government ownership in Europe except from reading.

Mr. HAMILTON. And from your reading, of course, you have formed an opinion?

Mr. LOVETT. Yes.

Mr. HAMILTON. I think the time is too short to undertake to go into a discussion of Government ownership. However, it might be valuable to this committee, if you are willing, to make a general statement of your views in relation to the subject of Government ownership, and illustrate your conclusions by the history of Government ownership in certain cases.

Senator TOWNSEND. May I ask a question right there?

Mr. HAMILTON. Certainly.

Senator TOWNSEND. Mr. Lovett, are you going to be here throughout these hearings?

Mr. LOVETT. No; I had not intended to.

Senator TOWNSEND. I did not want you to stay for the purpose, but I wanted to look up some questions to see if they have been discussed, but I do not want you to come back.

Mr. LOVETT. I shall be glad to do so.

Mr. HAMILTON. Perhaps too much is involved in that question.

Mr. LOVETT. I shall be glad to state it briefly, if I may.

Mr. HAMILTON. If you will do so.

Mr. ADAMSON. If Senator Townsend or Mr. Hamilton desires to examine you at any length, I suggest that you come back here at some other time.

Mr. LOVETT. That is agreeable to me.

Senator TOWNSEND. No; I do not want him to come back here on my account.

Mr. LOVETT. It will be perfectly convenient for me to come back here at any time after April 1, and I would be very glad to come back, and I shall not regard it as any inconvenience but really as a privilege.

Mr. ADAMSON. This committee will probably adjourn after next Thursday's session until after the House has organized and until we can see what we are going to do.

Mr. LOVETT. I should like very much to have the privilege of coming back at any time that you gentlemen would like to have me. I can say a few words in relation to Government ownership now, Mr. Hamilton, if you wish.

Mr. HAMILTON. Yes; if you are perfectly willing to do so.

Mr. LOVETT. I can not give much information about Government ownership of railroads. I can simply express my opinion; it is purely an opinion, and not knowledge, and it is based largely upon what I have read about European railroads. The actual facts will be presented to you during the hearings. What I say is based upon my knowledge of our own country and of conditions that prevail here and of our system of government.

First, I think it would be unwise, for the reasons I indicated briefly in answer to Judge Sims's questions. I believe that where the Government has unrestricted power of regulation, as ours has, it

would be a waste of Government credit and Government energy to take over a business that can be conducted by private ownership, for the benefit of private enterprise, and with private initiative and private economies. It seems to me an unnecessary strain of the Government's credit.

I believe that Government ownership in an autocratic government, where no political considerations enter into the management, may be efficient. In saying this I do not want to be understood as criticizing Congress or any Member of Congress, but I am simply dealing with what we all recognize as facts in our system of government.

Mr. HAMILTON. You can find illustrations in Australia, for instance, of certain difficulties that grow out of legislation in this connection.

Mr. LOVETT. Yes. Now, in this country I believe if we had Government ownership there would be an immense pressure upon every Congressman and every Senator for improved facilities for his State and for his district; that there would practically be competition among the districts and the States and the different sections for improved railroads, handsome, ornate stations for the towns, and for the building of branches and extensions. I believe there would be a great waste of public money and of public credit in providing facilities and attractive features and additional lines that would not be justified by any public interest or any public consideration. Under the pressure that would be applied to every Congressman and every Senator by the people of their district I believe that combinations would be formed that would involve an enormous amount of public money.

I believe also that there would be an increase in jobs, in the number of positions, and that there would be a vast number of useless positions filled at the expense of the public by voters and influential citizens, which is not possible under private management. I have spoken before of the waste of capital. I believe this latter consideration would add enormously to the expense of operation and maintenance. If there should be Government ownership, the latter evil would be considerably lessened by disfranchising the railroad operatives.

Mr. HAMILTON. You know that was tried, in one instance, in Australia?

Mr. LOVETT. In Australia; I understand it was.

Mr. HAMILTON. But they restored the franchise, if I understand it correctly.

Mr. LOVETT. But I do not believe it would be done in this country, because the railroad employees are so numerous and so well organized politically that they would succeed in resisting politically any such effort. The consequence is that certain highly organized and politically influential organizations would succeed in getting very much more pay than they really would be entitled to, and would succeed in creating a great many unnecessary positions.

My judgment, in summing it all up in this very brief statement, is that through the waste of capital on account of unnecessary construction—construction of lines that are unprofitable and unjustified—and of ornate improvements and increased conveniences and luxuries the financial operation of the roads would prove a failure, and that in

time the Government's credit would be impaired. I believe it was stated before this committee that the Government would get the money at 3 per cent. The Government would not do anything of the sort. The Government's bonds are so valuable because there are so few of them, and the Government's credit is so high because it is not strained. But when the Government issued bonds to pay for all the railroads of the United States, or any other obligation, the supply of Government securities would be so abundant that the Government would have to pay about the same rate for money that other people pay. The Government's credit would not be nearly as good, because it would be under a greater strain.

Furthermore, I believe that by eliminating competition, as would be the case under Government ownership, the individual initiative would be very greatly impaired. Of course, there would be inventions and some improvements, but nothing like what there is under the force of competition, which stimulates private initiative so much. On the whole, I believe that if the Government would be saved from bankruptcy the rates would have to be increased. I am entirely satisfied that the general level of transportation rates would in the course of time, and probably a very short time, be very much higher than now.

That is stating in as few words as I can, in a general way, my objection as a citizen to Government ownership. From the standpoint of a railroad officer I ought to say that as between Government ownership and the system of diversified and conflicting regulations into which we have drifted, I believe in time Government ownership will come, because that system will not produce the transportation facilities the country must have.

MR. HAMILTON. The time at our disposal is too brief to ask you to go into a discussion of the success or failure of Government ownership in specific instances in the various nations, and perhaps some time later, if you should happen to be here and it should be convenient, it might be illuminating if you would discuss that.

MR. LOVETT. I should be very glad to do it, Mr. Hamilton. I will say also that the advisory committee has been trying to get the very best and most authoritative evidence on this subject possible to bring before this committee. I am not sure they will get just the men they want, but there will be witnesses before the committee on that subject.

MR. HAMILTON. There will be witnesses?

MR. LOVETT. Yes; and who would know more about its operation in other countries than I do. I have only undertaken to state to-day what I have conceived would be the result of Government ownership from my reading, as applied to our political and governmental institutions.

MR. HAMILTON. Will you have witnesses with reference to the operation of the Inter-Colonial of Canada?

MR. LOVETT. Yes.

MR. HAMILTON. And the Prince Edward Island line?

MR. LOVETT. Yes; those cases are being studied, I understand. Mr. W. M. Ackworth, the greatest English authority on railroads—and I do not know any man whose judgment is more entitled to respect than Mr. Ackworth's on the subject—we will either have him or a statement from him. He has been requested to make a statement, but whether we get him or simply produce a statement from him we can not tell now. But we will have him, among others.

Mr. THOM. I might suggest, Mr. Chairman and gentlemen, whether the convenience of the committee will be such as to hear him before he sails from this country.

Mr. ESCH. He is a most valuable witness. He appeared before the Senate Committee on Interstate Commerce in 1905, when they framed the Hepburn Act.

Mr. THOM. Perhaps this committee will hold a special session to hear him before he sails.

Mr. ESCH. It certainly would be worth while.

Mr. LOVETT. He could not come right now, because he is engaged as one of the advisors of the Canadian Government.

Mr. ADAMSON. Could he come next week?

Mr. LOVETT. My information is—Mr. Trumbull told me—that he could not come in the immediate future.

Mr. ADAMSON. Mr. Thom can keep in touch with him and advise the committee.

Mr. HAMILTON. His testimony would be most valuable. It would seem to me that it would be very important to have a discussion before this committee of the history of the operation of the various Government-owned railroads, with a view to determining whether they have been successful or otherwise in their operation.

Mr. LOVETT. Mr. Ackworth, I know, has made a study of that subject.

Mr. SIMS. He is absolutely opposed to Government ownership, as I have been informed.

Mr. LOVETT. You say he is absolutely opposed to Government ownership?

Mr. SIMS. I understand that he is.

Mr. LOVETT. I can not answer that. He discusses it and gives the history of it in various countries, and as far as I have followed him I do not understand that he is opposed to it in all cases.

Mr. HAMILTON. It seems to me, so far as that is concerned, that the question whether he is opposed to Government ownership or not is not as important as the question of whether he gives us accurate information as to the operations of these railroads.

Mr. LOVETT. Yes.

Mr. ADAMSON. The plan is suggested, Judge (with Mr. Hamilton's consent), that in case the Government should desire to take over the railroads that the holders of the present securities would be willing in a large degree to substitute the Government's securities for the present securities. What do you think of the probability of that?

Mr. LOVETT. I think that is true. They would want reinvestment, and I have no doubt that they would take the bonds; but a man getting a 6, 7, 8, or 9 per cent return on his investment would look about some before taking a 3 or 4 per cent return.

Mr. ADAMSON. Under the political aspects of the case, is there not another possible danger that you had not described, which might be the greatest one? That is, that if the present holders take bonds—and we all acknowledge that we have to have experts to run a railroad—we have to employ our creditors to manage our property. Do you not think that would probably create about the greatest political oligarchy that ever was in any country, and that we should have the

railroads owning the Government instead of the Government owning the railroads?

Mr. LOVETT. The railroads are not run, really, by their owners, Judge Adamson.

Mr. HAMILTON. All that the Judge is suggesting in this connection would arise in connection with the discussion of the operation of the various railroads in the various countries.

Mr. LOVETT. Yes.

Mr. HAMILTON. Most of these problems have arisen in connection with the operation of railroads so far.

Mr. ADAMSON. Have you finished?

Mr. HAMILTON. I think we might as well suspend.

Mr. ADAMSON. I want to ask some questions.

Mr. HAMILTON. I am only suggesting that because I feel that we are approaching the time when we ought to adjourn.

Mr. ADAMSON. I do not want to take your time, but if you finish before 1.30, I should like to ask Judge Lovett about a little matter. Of course, all great matters are made up of little matters.

Mr. HAMILTON. Go ahead now.

Mr. ADAMSON. You referred to the \$600,000 charge which Illinois inflicted on the New York Central. That was in the nature of a license, was it not, and not a registry fee?

Mr. LOVETT. No; as I understand, it was a charge either for granting the consolidation of these lines extending through six States, or for filing the mortgage.

Mr. THOM. It was not filing the mortgage.

Mr. LOVETT. Then it was for the consolidation, and it was based upon the capitalization.

Mr. ADAMSON. How much figure, in expense, does the fact cut that a mortgage to secure an issue of bonds must be recorded in every county through which the railroad runs? Is that material or is it negligible?

Mr. LOVETT. The mere recording fee, the ordinary recording for the purpose of notice to creditors, as under the real-estate laws, of course, is not affected by the amount of the mortgage, ordinarily.

Mr. ADAMSON. I know that.

Mr. LOVETT. But rather by the physical size of it. That is not an important item. But the fees charged in some State for registering or granting or recognizing a consolidation or a mortgage, not by the counties but by the States, are sometimes quite burdensome. I think the Illinois charge is 50 cents a thousand dollars, or something like that.

Mr. THOM. A dollar a thousand; and the tax in Illinois was for the approval of the security issue.

Mr. SIMS. It was a tax, then, and not a license.

Mr. ADAMSON. The purpose of any lien is to give notice to persons who deal in the same property?

Mr. LOVETT. Yes.

Mr. ADAMSON. Now, in the event of our adopting a centralized control of stocks and bonds, whether under your plan or the one that we suggest in the railroad bill, what will be the necessity of requiring any further record of mortgages in the locality, when nothing can be done except by the approval of the Interstate Commerce Commission? Why incur that expense, whether it is great or small?

**Mr. LOVETT.** It is not a matter of enormous importance, and I do not see any particular necessity for it, because the record of everything can be with the Interstate Commerce Commission.

**Mr. ADAMSON.** You would look there for all your information?

**Mr. LOVETT.** But the probabilities are that people who are interested in the company, as to what it owns, what liens there are, etc., might through force of habit rather go to the county recorder and examine it on the records than write to the Interstate Commerce Commission for a printed copy, which they could always get.

**Mr. ADAMSON.** Are there any further questions?

**Mr. SIMS.** I wanted to ask one, because it was brought out by a subsequent examination. It is this, Judge: With reference to the Adamson law, is it not reasonable to suppose that it would be more burdensome on the railroads in the earlier stages of its application than it will ultimately become?

**Mr. LOVETT.** No, Judge Sims; there is no supposition about it. In arriving at what it would cost before, we took for two months in the year, April and October, representative months, the time slips signed by the men. Each man as he gets his run signs a slip showing whether he draws pay on a time basis or on a mileage basis, and what it is, and that is turned in. Certain roads took these time slips and applied the eight-hour day in lieu of the existing schedule, and in that way arrived at the difference.

But the question, suppose that instead of putting in this time, we speed up the trains, as was suggested, to 12 hours. That is about the only way in which apparent economy could be effected. You would avoid overtime in that way. But these men gave their judgment as to whether it would pay better to speed up the trains or pay the overtime. We wanted information about this, not merely for the public, but we wanted to know what it would cost; and the opinion of the operating men, without any dissent, so far as I know, was that it would be cheaper to run the same as we are running now and it would involve less money than to reduce the trainloads and put on more trains, and undertake to change terminal facilities. That is a matter of judgment.

**Mr. SIMS.** I mean by "immediately," that you can not make any kind of arrangement immediately, as I understand it, to avoid this, that would be less expensive than the payment of the wage scale as shown by your time slips; but, ultimately, will not the railroads adjust themselves as far as possible, wherever they can save money by doing so—will it not have a tendency to cause them to reduce the cost?

**Mr. LOVETT.** It would be criminal, almost, for them not to do it, if they can.

**Mr. SIMS.** Can they not do it? If you double-track the road, can't you move the trains faster?

**Mr. LOVETT.** That involves a question of the new capital, and the expenses involved as to whether it is cheaper to pay extra time or to double-track the road.

**Mr. SIMS.** I mean, not on that account, but double-track it for general purposes. Can't you move quicker on a double-track road than on a single-track road?

**Mr. LOVETT.** That depends, Judge Sims. A road is not double-tracked unless there is need for it.

Mr. SIMS. I do not suppose you would double-track a road simply for what you would save in wages to your trainmen.

Mr. LOVETT. Of course, it would be possible, if you dispense with sidings, and so forth, to run faster.

Mr. SIMS. I mean on a single-track road.

Mr. LOVETT. Of course, they are supposed to schedule the trains so as to avoid delays. The judgment of the operating men is that they can see no way of avoiding this increase; that it is better to pay the overtime than do the other things. I have no opinion on that except based on what the operating men state.

Mr. SIMS. I have none, either, and simply wanted to know what you thought of it.

Mr. ADAMSON. Judge, your indisposition to modify your system, to comply with the law, reminds me of a story told of Joseph Adamson, who rebuked his servant for drinking heavily on several occasions, but it did not seem to have any effect on him, and finally he thought he would reform him by telling him about a man who tried to blow out a cannon. He told him that he blew into the cannon, but his breath was so charged with alcohol from drinking that it caught fire and blew him up. After listening to that the man said, "Boss, I will never blow out a cannon while I live."

Judge, the committee wants to thank you for your services. We believe you have given us very valuable information, and we appreciate your courtesy and patience. We hope to see you again, if you have anything to tell us, or perhaps Judge Sims may have something else he wants to ask you.

Mr. SIMS. I want to say that I have refrained from asking any questions except those which I thought would give the committee information.

Mr. LOVETT. I am very grateful to the committee for its patience in hearing me on this matter, and perhaps, when I work out the application of your anecdote, I may be even more grateful.

Mr. THOM. I understand the committee will not to-day begin with another witness?

Mr. ADAMSON. No.

Mr. THOM. On Monday morning, at half past 10, which I believe is the hour for convening—

Mr. ADAMSON. If you can supply the committee with valuable witnesses—and you must remember that you have spoiled us by introducing us to such good ones, and I hope you will not reduce the grade—but if you can supply us with witnesses, we can hear you until Thursday. I think the committee will have to suspend on Thursday.

Mr. THOM. I understood that. That is the reason I addressed the chair. Mr. Kruttschnitt, chairman of the board of the Southern Pacific, who has been waiting patiently during this week, from Tuesday to the present, will be present. I assume that the importance of his testimony will probably cause the committee to consume the whole time from Monday to Thursday with him. Now, we had as a witness to succeed Mr. Kruttschnitt, Mr. Howard Elliott. If it is the judgment of the chairman, and the committee justifies me in doing so, I think I will notify Mr. Elliott that there will be no chance of hearing him next week.

Mr. ADAMSON. I have no means of advising you, but I assume the committee will not examine other witnesses at such great length as they have Judge Lovett.

Mr. THOM. Even so, you have consumed a whole week with Judge Lovett, and you say you will sit only until Thursday, and I think the importance of his testimony will justify my notifying Mr. Elliott that there will be no chance of hearing him next week.

Mr. HAMILTON. It is very important to hear as many witnesses as we can. Can we not work out some plan—and I suggest this with great diffidence, and with—I appreciate the importance of Judge Sim's examination, but it ought to be possible to work out some plan by which each member of the committee, in the first instance, could be allotted so much time. Some members might probably want to consume more time than was originally allotted to them, but I think that this might be taken care of later by taking it out of the time of some members who may not desire to consume all of their time. I think we should not take a whole week with one witness.

Mr. ADAMSON. That reminds me of once when I was on a committee. We were examining an applicant for the right to preach, and a lady sidled up to me and asked me to ask him if he understood how to preach; that that was the important thing. I suggest to Mr. Thom that he aid us by putting up only witnesses who know something about the subject and not put up witnesses who will repeat things over and over again.

Mr. HAMILTON. I think we can judge the quality of the witnesses to come by the quality of the witnesses who have appeared before.

Mr. ADAMSON. I am just importuning him not to reduce the grade.

Mr. THOM. I think in the future it will be improved. However, I do not think you can improve on Judge Lovett.

Mr. ADAMSON. No; you are just fishing for a compliment. I think that every member of the committee should be allowed to examine the witnesses for as long as he may desire.

Mr. HAMILTON. But we should have a working arrangement as to procedure.

Mr. ADAMSON. Well, without objection, it is understood that the witnesses will make their direct statements as brief as possible and that each member will examine them as briefly as possible. We will adjourn until Monday at half past 10.

(Whereupon, at 1.30 o'clock p. m., the committee adjourned until Monday, March 26, 1917, at 10.30 o'clock a. m.)



## INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT CONTROL AND REGULATION.

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MONDAY, MARCH 26, 1917.

UNITED STATES SENATE,  
JOINT SUBCOMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The joint subcommittee met at 10.30 o'clock a. m., Hon. William C. Adamson (vice chairman) presiding.

Mr. ADAMSON. The committee will come to order. Mr. Thom, what witness will you introduce?

Mr. THOM. Mr. Kruttschnitt, chairman of the board of the Southern Pacific, will now come before the committee; and may I ask that he be allowed to read his statement?

Mr. ADAMSON. Mr. Kruttschnitt, the committee will be glad to hear you, and you may take your own time, without interruption.

Mr. KRUTTSCHNITT. Thank you.

### **STATEMENT OF MR. JULIUS KRUTTSCHNITT, CHAIRMAN OF EXECUTIVE COMMITTEE, BOARD OF DIRECTORS, SOUTHERN PACIFIC CO.**

Mr. ADAMSON. Will you give your official station and post-office address, Mr. Kruttschnitt?

Mr. KRUTTSCHNITT. I am chairman of the executive committee of the board of directors of the Southern Pacific Co.; business address, 165 Broadway, New York.

Mr. Chairman, to save time and be as brief as possible, I will just read what I have to say. It will take much less time and much less space that way.

Mr. ADAMSON. Adopt your own course, Mr. Kruttschnitt.

Mr. KRUTTSCHNITT. The present condition of the credit of American railways is not good. Money can be borrowed by cities and States at very low rates; for instance, the cost of money borrowed by the State and by the city of New York is between 4 per cent and 4.25 per cent.

*Bond sales.*

Date.	Amount and term.	Interest rate.	Interest basis.
<b>NEW YORK CITY.</b>		<i>Per cent.</i>	<i>Per cent.</i>
May, 1913.....	\$45,000,000, 50 years.....	4½	4.490
April, 1914.....	\$65,000,000, 50 years.....	4½	4.190
June, 1915.....	\$46,000,000, 50 years.....	4½	4.437
Do.....	\$25,000,000, 1 to 15 years, serials.....	4½	4.297
April 1916.....	\$15,000,000, 1 to 15 years, serials.....	4½	4.030
Do.....	\$40,000,000, 50 years.....	4½	4.125
Average.....			4.200
<b>NEW YORK STATE.</b>			
March, 1915.....	\$27,000,000, 30 and 50 years.....	4	4.080
January, 1916.....	\$22,000,000, 30 and 50 years.....	4	3.850
Average.....			3.960

The cost of money to the Southern Pacific Co. for the last four years is 5.21 per cent, thus:

*Bond sales.*

Date.	Amount and term.	Interest rate.	Interest basis.
1913.....	\$5,120,000 Southern Pacific Co. equipment trust certificates, series A.....	<i>Per cent.</i> 4½	<i>Per cent.</i> 5.40
1913.....	\$2,010,000 Southern Pacific Co. equipment trust certificates, series B.....	4½	5.50
1914.....	\$54,532,500 Southern Pacific Co. 20-year convertible gold bonds.....	5	5.23
1914.....	\$6,361,000 Pacific Electric Railway Co. first refunding.....	5	5.76
1916.....	\$5,110,000 Southern Pacific Co. equipment trust certificates, series D.....	4½	4.62
1907-1916.....	\$23,486,000 Northwestern Pacific R. R. Co. first and refunding.....	4½	4.77
Average.....			5.21

In other words, Southern Pacific paid over 30 per cent more for its money than the State of New York paid.

Railroad stocks paying 6 per cent are quoted as follows:

**SIX PER CENT STOCKS.***National Banks.*

National City, Chicago.....	154
Jefferson Park, Chicago.....	168
Bronx National, New York.....	162
Bowmanville National, Chicago.....	165
Average.....	162

*Railroads.*

Atchison, Topeka & Santa Fe.....	108
Southern Pacific.....	94
Northern Pacific, 7 per cent.....	104
Chicago & North Western, 7 per cent.....	119
Average.....	105

## EIGHT PER CENT STOCKS.

*National banks.*

Fort Dearborn National, Chicago-----	246
Merchants', New York-----	250
Coal & Iron, New York-----	200
Gotham, New York-----	205
Average-----	225

*Railroads.*

Union Pacific-----	188
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Mr. THOM. What was their rate of dividend?

Mr. KRUTTSCHNITT. The Union Pacific?

Mr. THOM. No; the banks.

Mr. KRUTTSCHNITT. The average was 225.

Mr. THOM. In the amount of that dividend, you are comparing the Union Pacific with 8 per cent—

Mr. KRUTTSCHNITT. They were all 8 per cent stocks.

Mr. THOM. I did not understand that you stated that.

Mr. KRUTTSCHNITT. Yes. The banks were 8 per cent and the railroads were 8 per cent.

The appreciation of the security by the public is in inverse proportion to the rate; that is to say, the lower the return that the public is willing to accept, the greater does it consider the security, and vice versa. The same is true as to stock. Chamberlain on Bond Investments gives the elements of an ideal investment thus:

1. Security for principal; 2. A fixed and fair return in interest; 3. Marketability—sale without difficulty; 4. Acceptable as collateral; 5. Freedom from direct tax; 6. Freedom from care (purchase by sinking fund, etc.); 7. Maturity after a satisfactory lapse of time.

All of the foregoing qualities exist in New York City and State bonds. Account Federal and State regulation of railroads, it can not be said that all of the principal elements or characteristics of an ideal investment exist in railroad bonds, because control of revenues by regulating bodies detracts from element 2, 2 affects 3, 3 affects 4; they comply not at all with element 5 and partially only with element 6.

2. *Credit of American railroads not as good as the public interest requires.*—The credit of American railways is not as good as the public interest requires, because as shown in No. 1 they can not sell their bonds at rates of return on money at which States and municipalities can do so; therefore the public has to be coaxed or persuaded by higher rates of return to take the securities.

While there have been some instances condemned by public opinion as financial mistakes and dishonesty on the part of railway managers or financiers, such instances are the exceptions in railroad management, and do not constitute a condition prevalent enough to account for the decline which has taken place in railroad credit.

It is true that there have been some instances of financial mismanagement and dishonesty on the part of railway managers or financiers, but such instances are exceptions and do not determine a condition of railroad management in the United States. There

have been instances of dishonesty on the part of national-bank managers, but such instances have not shaken the confidence of the people in banks generally.

At the end of the year 1916 there were 69 receiverships of railroads that had occurred in the previous four years, of which comparatively few—not over 6 per cent or 8 per cent of the whole number, most of which were enumerated by Mr. Thelen in his testimony—were due to dishonest or fraudulent management, but these few cases should not stamp the general management and operation of all railways as dishonest to nearly the same extent as the 23 out of a total of 46 national-bank failures in the same years caused by dishonesty and fraud, or just 50 per cent of all failures (as evidenced in the report of the Comptroller of the Currency for 1916), should stamp the whole national-bank system as bad and in need of drastic and destructive regulation; yet the national banks have been under close Federal inspection and regulation for a much longer period than have the railways.

*Governmental causes for the decline of railroad credit.*—Outside of a few cases of dishonesty on the part of railway managers or financiers, which undoubtedly have affected railroad credit to some but not to a very important extent, the causes for the decline of railroad credit may be traced almost entirely to the hostile spirit of legislatures and regulating bodies and the resulting nature of many of the phases of regulation and management they have prescribed. Government regulation of national banks was the first regulation of corporations undertaken by the Federal Government. It has been constructive; the regulations are fair to the shareholders as well as to the public; their credit has in nowise been impaired by regulation, and under it they have prospered and their shares are eagerly sought as most safe and conservative investments. On the other hand, the regulation of railroads by diverse agencies in many instances overthrows all principles of economical operation, hampers the railroads by interfering in questions of management, subverts discipline, and is a far more potent influence in affecting the credit of the carriers than the comparatively few cases of dishonest management. Here are some of the unreasonable burdens imposed on the carriers:

(a) Arizona has limited the length of freight trains, and a bill has just been introduced in the Legislature of New York to limit the length of freight trains and to increase the number of men on switching locomotives. Bills limiting the length of freight trains have also been introduced in the State Legislatures of Missouri, Iowa, Kansas, Colorado, Utah, Nebraska, Texas, and Oregon, the details of all being alike in principle and purpose. (*Railway Age Gazette*, Mar. 2, 1917, p. 370.) In the years 1915 and 1916 7,000 freight trains were operated on Southern Pacific lines in Texas and Louisiana consisting of 50 cars or more. The number of accidents to these trains involving damage of \$500 or more was three; one due to a loose wheel, one to a broken rail, and the other to derailment of locomotive in frog, none of them having any relation whatever to length of train.

(b) Full crew, or superfluous crew, laws, operative now in 21 States, the most uncalled-for and useless expense ever imposed on

the carriers. An investigation by the bureau of research of the New Jersey State Chamber of Commerce finds:

1. That 97.6 per cent of railroad casualties have no relation to the size of the train crew, and that the remaining 2.4 per cent represent the highest conceivable percentage which could be affected through a change in the size of the train crew.

2. That casualties in Pennsylvania have been steadily higher since the enactment of the law, and that in so far as it was enacted as a safety measure designed to reduce the whole number of railroad casualties, it has been a conspicuous failure.

3. That a study of the casualty lists of other States which have, and States which have not, full-crew laws, fails to show any direct relation between the laws and the number of casualties.

4. That the estimated annual cost to the carriers in all States that have full-crew laws is \$5,000,000. (This would pay interest on \$100,000,000.)

Mr. Garrett, who made the investigation for the chamber, adds that it was of especial interest and significance to find that 55 out of 69 of the replies from engineers and 31 out of 66 of the replies from conductors, expressed "confidentially" that as individuals they were not in sympathy with the present New Jersey law, and that all of the only three replies from organizations of railroad trainmen were in sympathy with the law. This, of course, is easily understood, as the purpose of the law is to create positions for railroad trainmen.

During the calendar years 1915 and 1916 an inspection of the accident record of the Southern Pacific lines, on which 119,389,438 locomotive-miles were run (equal to circling the earth at the Equator 4,776 times) shows that not a single accident could be attributed to deficient numbers in the train crew.

(c) Headlight laws in 28 States, to avoid risks of accident that are imaginary or substantially nonexistent, introducing heavy expense and sources of danger through obscuring signals and blinding engineers of opposing trains. Inspection of the accident reports of Southern Pacific lines, covering the movement of 119,389,438 locomotive-miles (equal to circling the earth at the Equator 4,776 times) during the calendar years 1915 and 1916, shows that not a single accident could be attributed to improper illumination by headlights.

(d) Laws in eight States requiring erection of sheds for car repairs. House carpenters, farmers, and street and dock laborers all work in the sun and consider it no special hardship.

In legislating against imaginary evils the sense of proportion seems to be lost, and cures are prescribed when no disease exists. Full-crew bills were enacted to prevent accidents that had never occurred. As heretofore stated, the Chamber of Commerce of New Jersey has recently investigated this matter and finds that the full-crew bill, imposing heavy burdens on the carriers, had no relation whatever to 97.6 per cent of train accidents.

In April, 1916, a congressional committee held hearings on a bill to compel carriers to spend large sums of money on devices to eliminate less than 3 per cent of train accidents, ignoring the opportunity to prevent the other 97 per cent. Simply forbidding the public,

under penalty, as is done in Great Britain, to use the tracks as highways and requiring them to exercise the most ordinary reasonable and inexpensive precautions would eliminate over 80 per cent.

Other causes for decline of railroad credit are:

(e) Twenty States regulate hours of railway service, the variations running from 10 to 16 hours a day.

(f) Fourteen States have dissimilar safety-appliance acts.

(g) Twenty-one States in 1907 reduced railroad passenger rates.

(h) In 41 States, 1909, 664 new laws affecting railroads were enacted.

(i) In 40 States, in 1911, new railroad laws totaled 276.

(j) In 19 States, in 1912, 48 measures for further railroad control became laws.

(k) In 1913, out of the impressive total of 1,395 proposed enactments, 230 were placed upon the statute books of the several States.

(l) Between 1912 and 1915 upward of 4,000 bills affecting railroads were introduced into Congress and our several State legislatures, of which 440 have become laws.

(m) Nineteen States have legally asserted their right to control bond and stock issues of railroads operating within their limits, and doubtless this number will increase.

(n) In the fiscal year 1914, 166 railroads, operating 204,610 miles, reported total expense of \$28,703,983 in consequence of legislation regulating operation.

(o) Other laws affecting operation and increasing expense require 8-wheel cabooses instead of 4-wheel cabooses, reduced hours of service, days off at company's expense, additional watchmen at crossings, double track, safety appliances, electric headlights, etc.

(p) Federal railroad laws up to August 5, 1909, cover 175 royal octavo pages.

(q) Railroad statutes in force in New York to end of 1906 make up an octavo volume of 782 pages.

(r) Railroad statutes in force in Pennsylvania to end of 1907 covered more than 700 octavo pages.

(s) At a recent session of Congress upward of 2,000 railroad bills were introduced.

(t) Two million nine hundred and ninety-one thousand seven hundred and seventy-six reports of all kinds were filed with Federal, State, and other authorities during the year ended June 30, 1915. The preparation of these reports cost the carriers many millions of dollars.

(u) Recently the New York Central, which has only a total right of way in Illinois of 142 miles, although it operates 6,034 miles of first track, was taxed \$600,000 by the State of Illinois as a condition precedent to its approval of an intended financing.

(v) In 1913 the sale of \$67,000,000 of convertible bonds by the New York, New Haven & Hartford was approved by the States of Rhode Island and Connecticut, but failed because Massachusetts did not concur.

I realize that I have enumerated many subjects about which from the standpoint of different people many may differ. Some people may think all these measures wise and some people may think that some or all of them are unwise. The point, however, is not to arrive

here at a conclusion either that they are all wise or that they are all unwise, but simply to show that, as they substantially affect an industry as important as the railroad industry, which is continental in its extent and its importance, the wisdom or unwisdom of these measures should not be subject to be decided by so many diverse and perhaps differing authorities, but by one consistent and responsible regulating body.

Under existing systems of governmental regulation the amount of railroad revenues is largely determined by governmental regulating bodies.

Under existing systems of governmental regulation the amount of railroad revenue which is generally fixed with respect to prosperous years is almost entirely determined by regulation. The railroads were unusually prosperous in the calendar year 1916, not because of rate increases, but because of the very large volume of freight carried. In 1914, before the European war broke out, many were on the verge of bankruptcy through small volume, from which sufficient revenue did not accrue at existing rates to properly maintain credit. Net revenue is the product of traffic units by that part of the rate remaining after deducting the cost of operation per traffic unit, and of course will be greatest when the deduction is smallest. The cost of operation per traffic unit falls very rapidly with increase of volume as interest, taxes, and many items of operating expenses are not raised by quite large additions of traffic units. It follows, therefore, that, although that part of the rate per unit retained as net may be small, the number of units may increase to such an extent that the product or net revenue may be very large and satisfactory. The average rate received for 1 ton-mile in 1915 was 7.3 mills, of which one-third, or 2.4 mills, was net. Eight tons of freight—that is, 80 barrels of flour, 285 bushels of grain, 5,000 feet of dressed lumber—must be carried 1 mile to enable the carrier to buy a 2-cent postage stamp. Regulation, originally intended to stop rebating and discrimination and to insure reasonableness of rates, has been made to cover total revenue, and at the present day the conduct of a large volume of business on the lowest freight rates and highest wages in the world, in an unusually efficient manner, producing large returns, marks the carrier as an object of suspicion and attack, the excessive earnings in some way being considered reprehensible.

Power of the railroads to control their expenses, substantially affected by forces beyond their control, such as labor unions, the acts of legislatures, the demands of regulating authorities for facilities and service, etc.

The railroads have very little control over their expenses at the present time. Headlight bills, superfluous crew bills, laws prescribing hours of labor for employees, including eight-hour law now in the Supreme Court—this was written about two weeks ago—orders of commissions to construct needless and ornamental stations for political and monumental purposes, deafness of commissions to the pleas of managements to be allowed to use their own judgment in allotting capital for such vital purposes as ballasting heavier rail, substitution of judgment of commissions for that of the owners in questions of management, proneness of legislatures

to grant unreasonable demands of organized labor and unwillingness to do anything for the protection of the interests of the shareholders are some of the reasons why the control of expenses, and to a considerable extent the management of the railroads, have been taken out of the hands of their owners.

With this restraint upon the control of both their income and their expenses, forces are in operation which, unless controlled and safeguarded, menace the stability of the existing system of maintaining transportation facilities.

With the restraints upon control of income and expenses which are enumerated above, forces are in operation which, unless controlled, safeguarded, and checked, menace the stability of the existing system of railroad transportation facilities.

Principles must be introduced into systems of regulation which will reasonably assure proper income and reasonably protect railroads against the unjust exactions of labor and excessive demands in regard to conveniences and facilities in order to meet this situation and to create conditions that will attract investors.

There is no way of meeting this situation unless the interests of the shareholders and bondholders of railroads are reasonably protected, not only against arbitrary and unreasonable exactions of organized labor but by being relieved of unnecessary and unjustifiable expenses. Under constructive and intelligent regulation there is no reason why investors should pay \$160 per share for national bank stocks paying 6 per cent dividends, or 52 per cent more than \$105 per share for the shares of honestly managed railroads with large volumes of traffic and paying the same dividends. Eight per cent national-bank stocks command \$225, or 63 per cent per share more than shares of the Union Pacific, the only railroad in the United States that I know of paying 8 per cent, whose shares command only \$138 each.

Present systems of regulation do not contain adequate safeguards in respect to these matters.

The present systems of regulation for railroads pay very little attention to the interests of the shareholders and bondholders, afford no protection against the exactions of labor, and, in assuming many functions of management, subvert discipline and leave to the officers and directors little control and responsibility for the results of operation.

The present market for railroad securities is narrowed by the following causes:

(a) The European war has unquestionably narrowed the market for railroad securities. Mr. Loree's very interesting investigation of the effect of the European war on American securities shows that on January 31, 1915, American securities of a par value of \$2,704,000,000 were held abroad. On July 31, 1916, or 19 months thereafter, only \$1,415,000,000 of American securities were held abroad, showing that between the two dates some \$1,300,000,000 of securities were returned to this country. As there is evidence that securities are still being returned, and as Europe will probably be a borrower after the close of the war, it seems reasonable to expect that the market for American railway securities will then be very much more narrowed.

(b) The exhaustion of underlying liens and the necessity of obtaining new money through inferior liens or without security is undoubtedly a cause.

(c) Financing largely through bond and note issues involving fixed charges, as has been done in late years by the railroads, is undoubtedly a deterring cause.

(d) Other classes of securities are unquestionably more attractive, as is evidenced by the fact that the public is paying about \$160 and \$225, respectively, per share for national bank stocks yielding 6 per cent and 8 per cent dividends, while they are willing to pay but \$105 and \$138, respectively, for railroad shares paying the same dividends. (Chart No. 10.) The returns from shares of manufacturing corporations are much less affected by regulation and are more attractive to the public. (See Chart No. 10, p. 898.)

I have made some extra copies, Mr. Chairman, of the charts attached to these notes. I think I have six or eight separate copies which show, in graphic form, the returns from national banks, railroads, and a number of industries which I will pass to you as of possible interest.

Mr. SIMS. This will be a part of your hearing—that is, printed with your hearing.

Mr. KRUTTSCHNITT. Yes; those are duplicates of charts attached to the hearing.

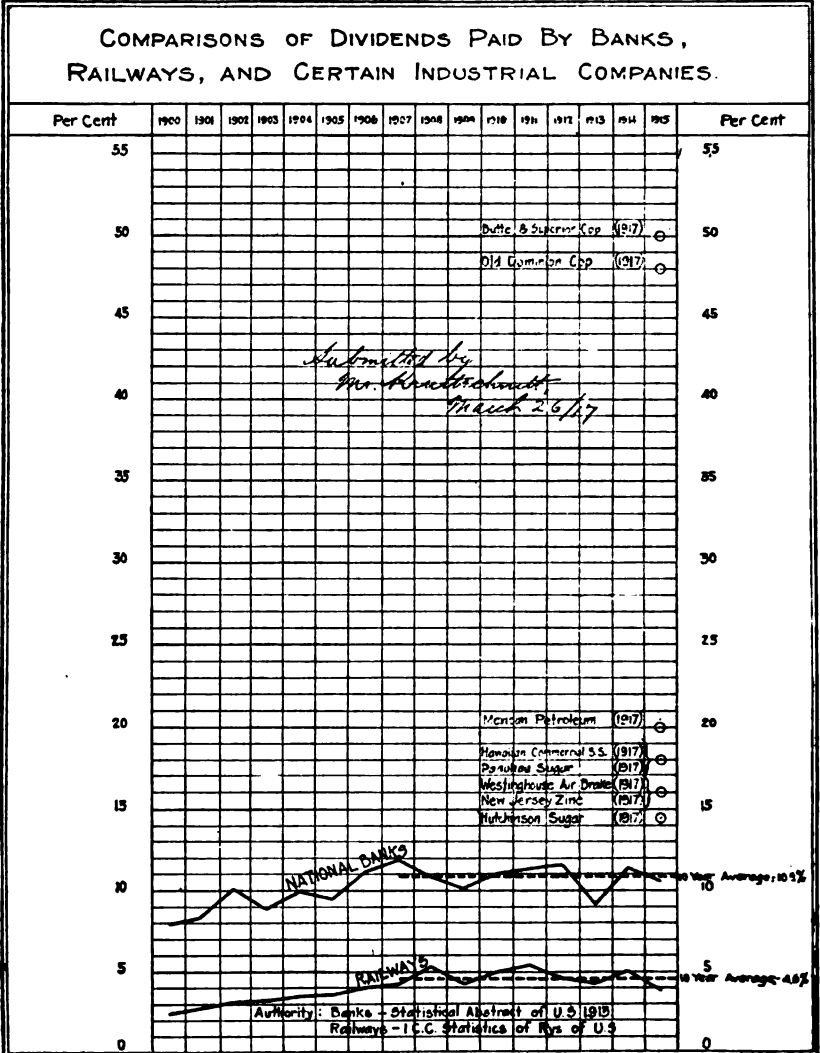
Mr. SIMS. Just give one to each member of the committee present.

Mr. KRUTTSCHNITT. (e) The arrogant attitude of labor, opposing arbitration in any form, unquestionably affects the attractiveness of railroad securities. Public acts of the Sixty-third Congress, first session, covering sundry civil expenses for the fiscal year ending June 30, 1914, provides that no part of the money shall be spent in the prosecution of any organization or individual for entering into any combination or agreement having in view the increasing of wages, shortening of hours, or bettering conditions of labor, or for any act done in furtherance thereof not in itself unlawful; and forbids the expenditure of any part of this appropriation for the prosecution of producers of farm products and associations of farmers who cooperate and organize in an effort to and for the purpose to obtain and maintain a fair and reasonable price for their products. Appropriations for sundry civil expenses for year ending June 30, 1915, and for sundry civil expenses for fiscal year ending June 30, 1916, contain same proviso.

The Clayton Antitrust Act, after forbidding corporations doing almost everything imaginable, specifies that antitrust laws are not to forbid the existence and operation of labor, agricultural and horticultural organizations, and such organizations are not to be held illegal combinations or conspiracies in restraint of trade.

At the time of the threat of the four brotherhoods to strike, in August, 1916, the President and Members of Congress were very insistent that as soon as possible after passing the Adamson eight-hour laws, laws recognizing the public interest in contentions between labor and the carriers should be framed, adequately protecting the interest of the public. From every bill that has been introduced in Congress, obligations or restrictions of any description bearing on:

CHART NO. 70



labor have been promptly removed on the protest of labor leaders. The interests of the public seem to be substantially ignored. It is proposed by some to seize the property of the carriers in case dissatisfied employees block operations, and that they be operated by the Government pending settlement of disputes.

(f) Inability of railroads to promptly increase their revenues to meet their needs.

The Interstate Commerce Commission is manifestly overburdened, and the promptness with which it can pass on questions submitted to it will be affected by the proposed increase in membership. It is now authorized to suspend proposed tariffs for a period of 120 days, and if a hearing can not be concluded within that delay, to extend the suspension for a further period not exceeding six months. Under this practice, if the increased rate should eventually be approved, the carriers are deprived of the revenue that should accrue to them during a period of at least 4 and frequently 10 months.

The length of time consumed in the investigation of advanced rates proposed by the eastern trunk lines, many of which were finally authorized, is in the memory of all of us. If the lines were entitled to these increases at all, they should have enjoyed their benefits from the date on which their tariffs were originally filed.

In its last annual report the commission recommends a lengthening of the period of suspension, but it is hard to see how the public would suffer through the modification of the suspension power suggested by the carriers, because, first, it would relieve the members of the commission of the responsibility of authorizing increases in rates, which they are reluctant to assume; and by requiring the railroads to assume the initiative it would leave the commission unprejudiced in future hearings upon complaints. Second, the power of the commission to grant reparation would assure merchants of the benefit of the lower rates previously in effect, whenever the commission, on complaint, should find the increases to be unreasonable and should order the restoration of the former rates. Third, it is a simple measure of justice to the carriers to give them immediate benefit of the revenue accruing from advanced rates to which they are entitled, inasmuch as the rights of the public are fully protected by the power of the commission to grant reparation.

Here is an instance in which the carriers sustained heavy losses through the delay incident to overloading the commission with work:

The opening of the Panama Canal in August, 1914, was anticipated by the quotation of rates by the steamship lines which contemplated service through the canal. This enabled the transcontinental carriers to determine what the competition would be, and their original application for authority to make necessary rates on a number of heavy sea-going commodities to meet the quotations on the canal lines was filed with the commission on July 9, 1914. A final authority under which the carriers felt warranted in proceeding was not received from the commission until May 17, 1915, after which the publication of tariffs and legal requirement of 30 days' notice postponed the effectiveness of the reduced rates until July 15, 1915, so that for 11 months after the opening of the canal the transcontinental lines were powerless to protect themselves against the diversion of an enormous volume of business.

Likewise, application for authority to make reduced eastbound rates via Sunset Route on certain heavy sea-going commodities was filed December 29, 1914, but under the machinery of the law could not be made effective until July 25, 1916, which subjected us to the diversion of the business for a period of more than six months.

By the delay incident to the granting of these applications and some others of lesser importance the transcontinental lines were deprived of the opportunity to compete against the steamships for traffic, which was taken by the sea routes, upon which the aggregate revenue on the basis of the rates finally authorized is conservatively estimated as at least \$6,000,000.

This is not intended as a criticism of the Interstate Commerce Commission which, it must be said, cooperated with the public and the carriers in solving a very complicated problem, but it is a forcible illustration of the costly burdens upon the carriers of existing regulation.

The leading editorial in the Wall Street Journal of February 26, 1917, comments on the necessity of enlarging the Interstate Commerce Commission thus:

How much the country is in need of an enlarged and reorganized Interstate Commerce Commission is illustrated in its recent handling of certain emergency measures proposed by the railroads. Eastern trunk lines attempted to reduce the "free time" on domestic freight held at New Jersey for final delivery in New York, Brooklyn, and elsewhere on New York Harbor. The commission suspended this reduction until June 15, as it did a new tariff increasing the charges for storage on freight for both export and domestic delivery held beyond the free time in carriers' warehouses at New York Harbor points.

Neither of these was a revenue measure. Both were primarily designed to spur consignees of freight to move it quickly off railroad premises and so facilitate the unloading of other cars and the efforts of the carriers to relieve the great evils of congestion. Both measures would have done a great deal to restrict whatever speculation in foodstuffs is going on and would almost certainly have exercised some restraint upon recent advances in food prices in New York. But the commission must allow itself four months in which to reach these cases and deliberate upon them.

Another recent case of a different sort concerns the efforts of the carriers to increase their revenues by raising rates which are out of line with the general rate structure. A year ago the eastern railroads served notice upon steel manufacturers of their intention to cancel on August 1 the export rates upon steel products and again subject them to full domestic rates. The steel men did not seriously object, but asked that the change be deferred until January 1. October 1 was then fixed as a compromise date.

The commission held hearings, after which it suspended the effectiveness of the new rates until January 29, or for nearly a month longer than the steel makers had asked their postponement, and later made a further postponement until July 29, the limit allowed by law. Fortunately the commission was able to reach a decision a few days ago, under which the railroads were able to make the change effective February 24. But for at least five months the railroads were prevented from relieving themselves of special low rates upon an important volume of traffic for which the commission itself found that all justification had long since disappeared.

When in July, 1914, the commission refused the trunk-line railroads any advances in rates, although admitting that their revenues were less than the public interest demanded, it adopted as the substantial ground of its refusal Mr. Brandeis's recommendations that the carriers seek other means of supplementing their income. Among the means specified were the abolition of free storage of freight and the adjustment of specific commodity rates found by him to be unreasonably low. Practically the only one of the steps then so highly recommended that the commission has not delayed or prevented was an increase in interstate passenger fares. The revenue results of this one do not begin to cover the increases in cost of labor and materials that have taken place since 1914.

(g) The exigencies of politics unquestionably affect the attitudes of commissions. In States where the commissions are elected it is noticed that orders for new stations are generally received about the time of elections. In one case where there was no complaint whatever about a station the question of a new one was raised by a member of the railroad commission who visited the town shortly before election, conferred with the citizens, and suggested the necessity of a new station, shortly after which the order was issued to build one. From time to time State commissions boast in their annual reports of the amount they have taken from railroad revenues by reducing rates and the benefits accruing therefrom to the public. These sums subtracted from railroad revenues impose very severe burdens on the carriers, while the reduction in rates often does not reach the consumer, and in most instances bears an insignificant and almost unappreciated proportion to the cost of the commodity. Chart No. 10-g, page 902, shows how slightly the retail prices of commodities are affected by freight rates for the years 1910-1917, thus:

Dressed beef, 1.68 per cent, or one-half cent per pound, Chicago to New York.

Ham and bacon, ninety-four one-hundredths of 1 per cent, or 3 mills per pound, Chicago to New York.

Flour, one-fourth barrel, 4.69 per cent, or 17 cents, Minneapolis to New York.

Underwear, suit, one-tenth of 1 per cent, or 3 mills, Boston to New York.

Underwear, suit, two hundred and sixty-nine one-thousandths of 1 per cent, or 7 mills, Boston to Chicago.

Shoes, pair, seventy-eight one thousandths of 1 per cent, or 5 mills, Boston to New York.

Shoes, pair, two hundred and nineteen one-thousandths of 1 per cent, or  $1\frac{1}{2}$  cents, Boston to Chicago.

Men's suits, one hundred and thirty-eight one-thousandths of 1 per cent, or  $4\frac{1}{2}$  cents, Boston to Chicago.

(h) Chart No. 10h-1, page 903—this is a most impressive one, Mr. Chairman—shows the rise of 115 per cent in commodity prices between 1895 and 1917, and the resulting fall in the purchasing power of the dollar from 100 to 45, or 55 per cent. The rise in the price of commodities is of no great consequence to those whose income is derived from the sale of commodities, for with them both income and outgo are proportional to prices, but the hardship is greatest on those, the selling price of whose commodities is regulated by law. The railroads are in this position, which is equivalent to being compelled by law to accept payment for their services from the public in debased currency, worth only 45 cents on the dollar.

You will observe that the fall in the purchasing price of a dollar there, which is what is received by the railroads from the public, is only 45 cents. It shows a fall of 55 per cent from the basing point.

Mr. Esch. I suppose that the very rapid divergence from the middle of February, 1915, to February, 1917, is largely due to the war conditions?

Mr. KRUTTSCHNITT. Between what points?

Mr. Esch. The middle of 1915 to February, 1917.

CHART NO. 22

# RETAIL SELLING PRICES OF COMMODITIES AND RAILROAD FREIGHT RATES IN 1917 COMPARED WITH 1910 AND 1900

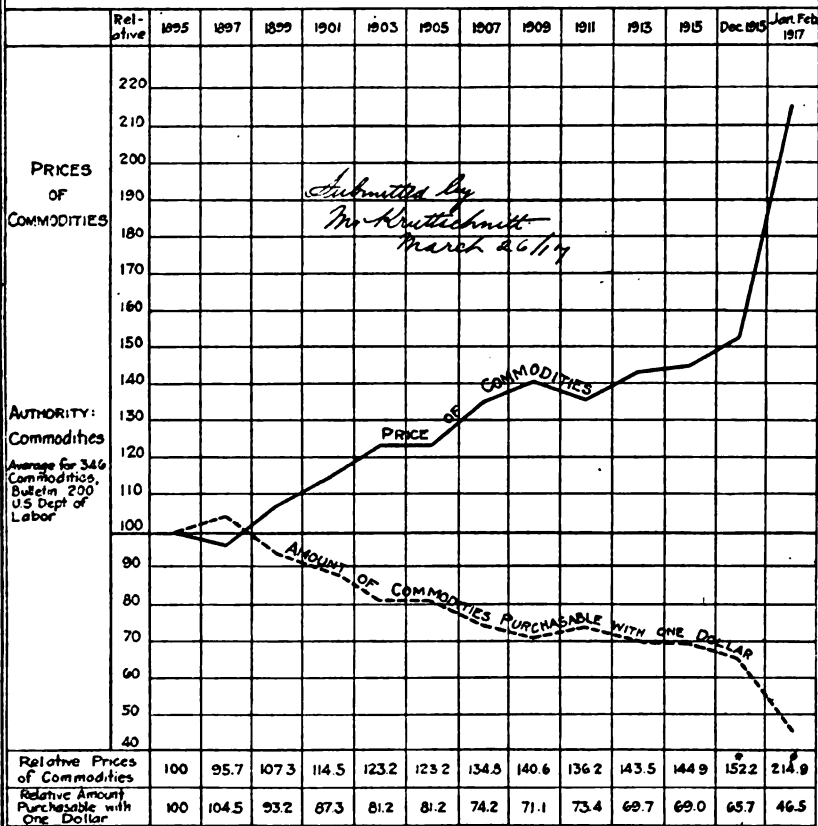
Commodity	Shipped from	Year	Retail Selling Price	Freight Rate	Total Price	Percent of Freight Rate to Selling Price																	
						25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100	105	110
DRESSED BEEF (per lb.)	Chicago to New York	1900	16.04	0.454	2.81																		
		1910	22.54	0.454	2.00																		
		1917	28.04	0.474	1.60																		
HAM AND BACON (per lb.)	Chicago to New York	1900	13.54	0.304	1.94																		
		1910	26.54	0.304	1.13																		
		1917	34.04	0.324	.94																		
FLOUR (per 4 bbl.)	Memphis to New York	1900	91.30	14.80	11.58																		
		1910	4.70	12.50	7.35																		
		1917	2.75	7.90	4.69																		
UNDER-WEAR (per suit)	Boston to New York	1900	41.50	0.254	0.167																		
		1910	2.00	0.254	0.125																		
		1917	2.60	0.264	0.100																		
UNDER-WEAR (per suit)	Boston to Chicago	1900	41.50	0.74	0.467																		
		1910	2.00	0.74	0.350																		
		1917	2.60	0.74	0.269																		
SHOES (per pair)	Boston to New York	1900	3.30	0.54	0.143																		
		1910	4.00	0.54	0.125																		
		1917	6.40	0.54	0.078																		
SHOES (per pair)	Boston to Chicago	1900	3.30	1.44	0.400																		
		1910	4.00	1.44	0.350																		
		1917	6.40	1.44	0.219																		
MEN'S SUITS	Boston to Chicago	1900	16.00	4.14	2.738																		
		1910	21.50	4.24	0.179																		
		1917	32.00	4.44	0.138																		

Submitted by  
Mr. W. H. Lusk  
March 26/17

Authority for retail prices: Responsible dealers in meats, groceries and clothing.

CHART No. 10b-1

UNITED STATES  
RELATIVE PRICES OF COMMODITIES AND AMOUNTS  
THEREOF PURCHASABLE WITH ONE  
DOLLAR—(PRICES AND  
AMOUNTS IN 1895  
TAKEN AS 100)



\* December 1915

\* Bradstreet January and February 1917 for 96 Commodities compared with 1895

Mr. KRUTTSCHNITT. Of course that rapid jump upward and fall in the purchasing power of a dollar were unquestionably due to war conditions.

Chart No. 10h-2, page 905, shows in full lines (A) passenger and freight rates, 1895-1915, and in dotted lines (B) what the rates would have been had they risen with prices.

Actual passenger mile rate, 1915, 1.985 cents; rates increased in proportion to commodity prices, 2.956 cents, or 50 per cent more; actual freight rate, 1915, 0.732 cents; rates increased in proportion to commodity prices, 1.216 cents, or 66 per cent more.

These differences represent savings to the public in the one year, 1915, alone of \$314,000,000 on passenger and \$1,340,000,000 on freight traffic, a total of \$1,654,000,000.

Chart No. 10h-3, page 906, shows comparative prices paid by Southern Pacific Co. for five material items in 1897, 1908, and 1917, and that between the earliest and latest dates the price of bridge timber has risen 75 per cent.

Those figures apply to our own company only. I was unable to get them for the other companies of the country, but our company is typical of the whole country:

Cross ties, 125 per cent; steel rails, 113 per cent; bar iron, 201 per cent; car-journal bearings, 161 per cent; while the average freight rate has fallen 13 per cent.

Mr. ESCH. What do you mean by "car-journal bearings"? Are those journal—

Mr. KRUTTSCHNITT. Those are journal bearings.

The next chart, Chart No. 10h-4, page 907, shows the effect of all causes, rises in prices of all commodities used on railways, and rises in prices of labor as well as fall in its efficiency, superfluous-crew laws, cost of valuation, hours of labor, on the cost of producing train-mile units, 1895-1915.

Senator TOWNSEND. What do you mean by "lessening the efficiency of labor"?

Mr. KRUTTSCHNITT. It is a universal complaint that labor, at the present time, per hour or per any other unit of time, is far less efficient than it was a few years ago; that their minds do not seem to be on their work, and we do not get the product out of them that we formerly did.

Mr. HAMILTON. How do you explain that?

Mr. KRUTTSCHNITT. Want of interest, want of loyalty to their employers—

Senator TOWNSEND. Well, now, that states what you believe to be the fact, what you say you know to be a fact. What is the psychology of it? How do you explain that, following up the facts?

Mr. KRUTTSCHNITT. That labor no longer looks to the carrier, to its employer, as in charge of its wages and destiny, but looks elsewhere; it looks to the State legislatures and to Washington. Their discipline has practically gone—all discipline, for instance, in train service. It is almost impossible to maintain any, because any superintendent who disciplines a member of the four brotherhoods has to stand trial for it. He is met by a grievance committee, who use every possible argument—intimidation and argument—to have him

CHART No. 1642

## PASSENGER AND TON MILE RATES, UNITED STATES RAILWAYS 1895 to 1915

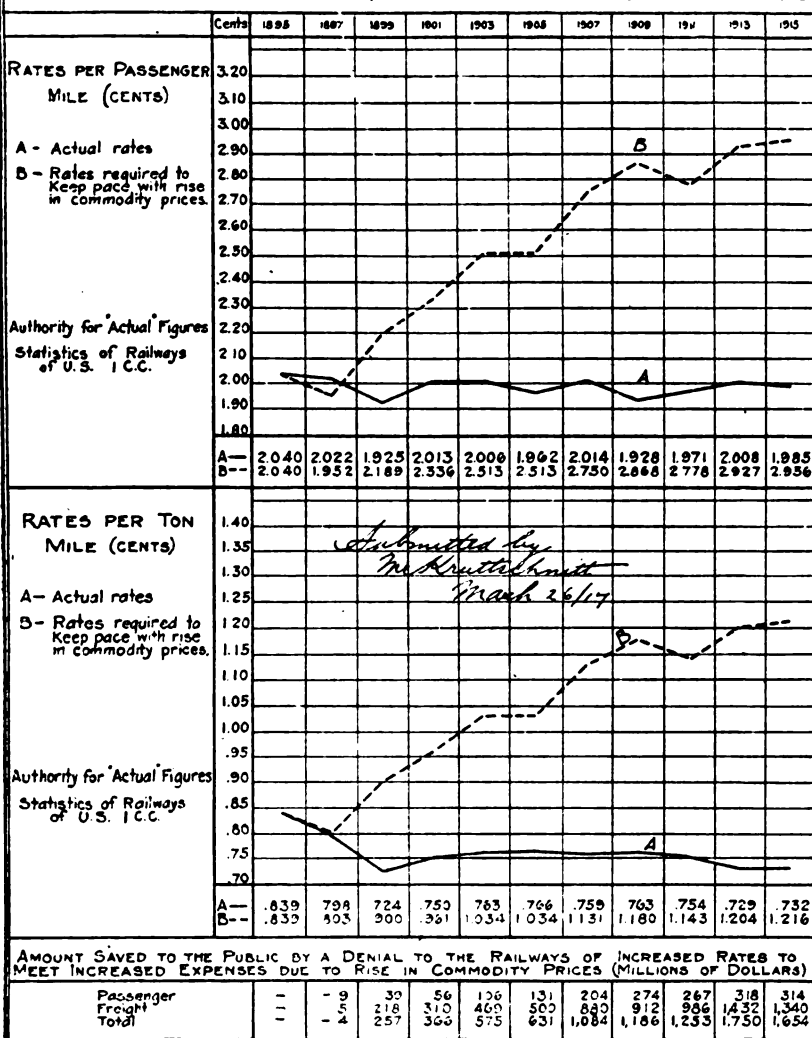


CHART No. 764-3

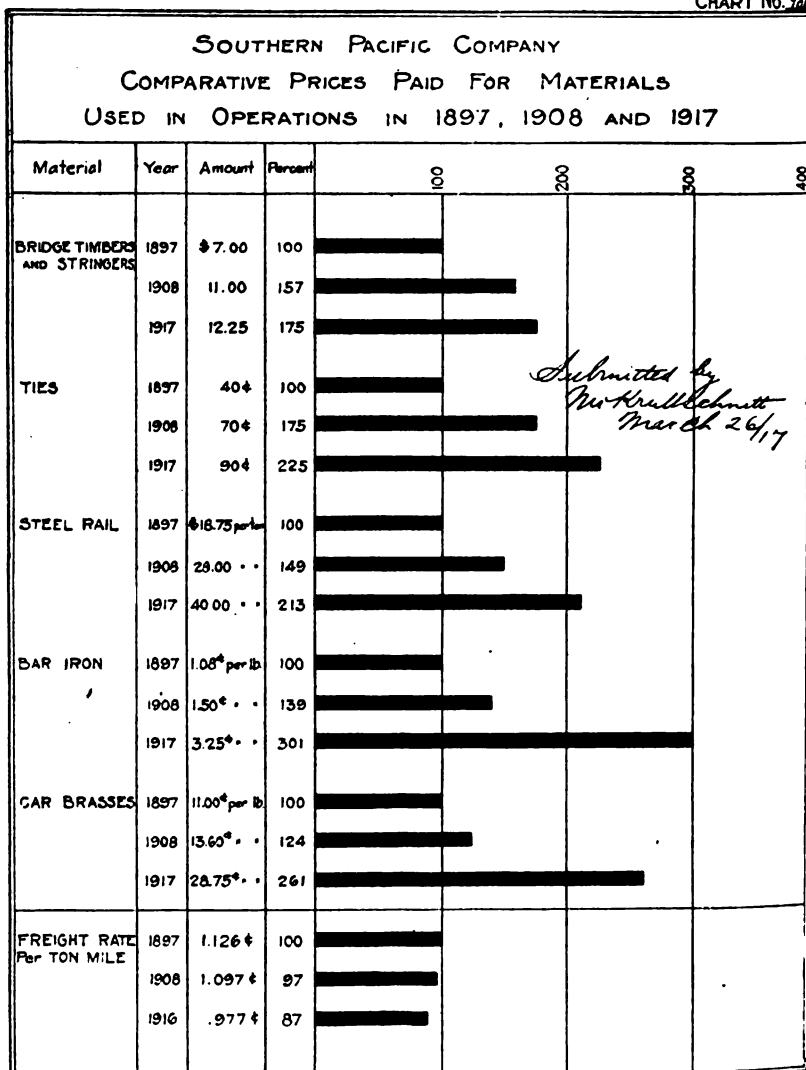
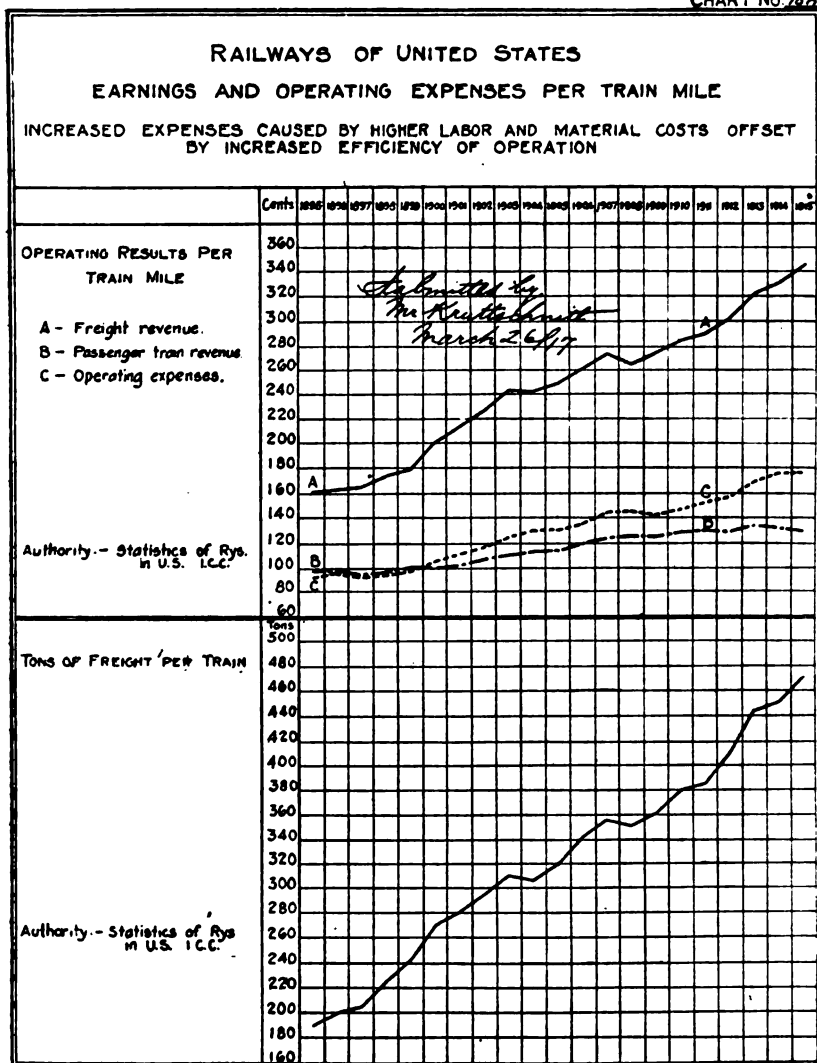


CHART NO. 1064



remit the penalty. If they can not get it from him, they go to the general superintendent, and if they can not get it from him, to the general manager, and by threats of a strike and tying up the railroad they get conceded what they want.

I will illustrate that. I can not be very accurate as to the date, but my impression is about three years ago, when the situation with respect to Mexico and the border got acute, our officers on our lines in Louisiana and Texas had been in conference with grievance committees of the conductors, brakemen, switchmen, and firemen for six months over some 76 cases of discipline that had been administered, against which they fought. The cases were so clear that the officers declined to remit the penalties. I think arbitration was offered and refused, and the men threatened to strike and did strike. After the strike had been on a day or two I received a communication from the head of the mediation board, suggesting or offering his services. I agreed. I told him I was perfectly willing, but I understood the men were not. He finally telephoned me a proposal that the men be all reinstated on their agreement to take up again for arbitration, if necessary, the settlement of these 76 cases. We told him that under the recommendations of his board and the plea that he made, that the use of our line was necessary for conveying supplies and troops to the Mexican border; that we would sink our contentions and accept the proposition as it came from the men and which he and his board were submitting.

So these questions were submitted again to a board after this strike and under whatever persuasion had been exercised by the Federal Mediation Board. Out of the 76 cases 61 cases were at once dropped and withdrawn, as the charges were incorrectly made. In other words, the men abandoned them. About eight cases—seven or eight cases—were decided in favor of the men and the remaining cases were turned over to arbitration. Now, that represented the penalties, perhaps, of certainly not more than one year on that system of lines, and the officers were kept at work for over six months arguing with the men why these penalties should stand and why they had been incurred and why they were necessary for the purpose of discipline; and then followed the strike, mediation, another conference with the officers, the dropping or withdrawal of very nearly all of the complaints, and arbitration of a few, and yielding to the men in a very few. Now, that is a typical case.

Mr. THOM. You said that seven or eight cases were decided in favor of the men? You mean by the officers on the rehearing, and not by arbitration?

Mr. KRUTTSCHNITT. Yes; they yielded. In other words, they withdrew the penalties. That is a typical case on our system. We have two grand divisions on our system. A large part of the time of the officers is taken up every year with simply argument with grievance committees.

Mr. HAMILTON. I assume before you finish you will devote part of your statement to remedies, such remedies as you propose. Am I right about that?

Mr. KRUTTSCHNITT. Yes; this matter in former years gave me a great deal of trouble personally when I had direct charge of operations and I have given it a great deal of thought and have written a

number of memoranda in the past four or five years which I have brought up to date, and with your permission I will submit them later on.

Mr. DOREMUS. In your Chart 10h-3 you show the comparative prices paid for materials in 1897, 1908, and 1917. Why did you select the years 1897 and 1908 for the purpose of comparison with 1917?

Mr. KRUTTSCHNITT. Because this chart for the years 1897 and 1908 had been prepared to give testimony in—I think it was the Union Pacific and Southern Pacific merger suit—and the same chart was taken, with the year 1917 added.

Mr. DOREMUS. The periods 1897 and 1907 were periods of depression, were they not? I was wondering whether in your judgment that would be a fair sort of comparison. Of course, 1897 was a year of abnormally low prices; 1917 was a year of abnormally high prices.

Mr. HAMILTON. As to 1897, I fancy that might be regarded as a year of emergency low prices.

Mr. DOREMUS. I hardly think we had recovered in 1897 from the depression which had existed prior to that time.

Mr. HAMILTON. However, 1907 was a very prosperous year for the railroads. The panic struck the country in the last part of it, but the full effect was not felt until 1908.

Mr. DOREMUS. The panic of 1908—

Mr. KRUTTSCHNITT. If you will pardon me a moment and will turn to the next chart, 10h-4, you have the prices from 1895 to 1915, and you can see at a glance what the trend of the prices was for all those years, and those prices were taken for all the roads in the United States.

Mr. DOREMUS. That is No. 10—

Mr. KRUTTSCHNITT. 10h-4. Taking the operating expenses on that sheet, you will see that the operating expenses which reflected the prices of materials—that is the dash line marked "C"—was about at a maximum in 1907 and continued about the same in 1908 and fell slightly in 1909, and thereafter shows an almost uniform increase.

Mr. KRUTTSCHNITT. This chart, Mr. Chairman, that Mr. Doremus called attention to, may be ignored, if you choose, and pass over to the next chart, 10h-4, and you will see the line C, indicating the operating expenses of the railroads per track-mile, showing an almost uniform increase from 1894 to 1915, with a few gentle undulations in it, and one of the things that appeals to me in the use of charts is that you take them and draw your own conclusions from them.

Mr. SIMS. Whatever the causes may be?

Mr. KRUTTSCHNITT. Yes. That is the upper chart in front of you.

Senator TOWNSEND. Chart No. 10h-4 is brought down to 1915, is it not?

Mr. KRUTTSCHNITT. One shows the statistics for our own road, which I can get up to date, and the other is based on the statistics of the railways of the United States published by the Interstate Commerce Commission, the latest date of which we can get is 1915.

This chart, 10h-4, shows the combined effect of all causes—rises in prices of all commodities used on railways and rises in prices of labor as well as fall in its efficiency, superfluous crew laws, costs of

valuation, hours of labor—on the cost of producing train-mile units, 1895–1915.

Cost per train-mile, 1895, 92 cents; cost per train-mile, 1915, 178 cents; a rise of 93 per cent.

Universal bankruptcy was avoided by the carriers only by heavy capital expenditures to flatten grades, eliminate curvature, and to purchase heavier locomotives and cars. all incurred for the purpose of increasing efficiency in train movement by hauling more tons per locomotive, which increased between 1895 and 1915 from 190 to 472 tons, or 148 per cent, and this, the only avenue of escape from financial ruin other than substantial raises in rates, heretofore denied to the carriers, labor seeks to close by train-limit laws.

Costs per ton-mile in 1895 and 1915 can be computed from data on Chart 10h-4 by dividing the train cost by tons per train, and earnings per ton-mile are given on Chart 10h-2, thus:

	Freight rate.	Cost per ton-mile.	Net per ton-mile.
1895.....	8.4	4.8	3.6
1915.....	7.3	3.8	3.5

An accomplishment highly creditable to American railway management in maintaining net earnings per ton-mile in face of rising costs and falling rates.

This chart, 10-i, page 911, was intended to show the rise of taxes per unit of railroad—that is, per mile. I did not chart the aggregate, because the aggregate is affected by other miles of railroad, but this shows the increase per mile from the lower left-hand corner of \$200 in 1890, to the upper right-hand corner of about \$575 in 1914, and a slight fall to a little over \$560 in 1915.

Mr. THOM. You said \$575. It is \$570 on your chart, is it not?

Mr. KRUTTSCHNITT. No; it rises, you will notice, above the 570 line; it is about 573.

Mr. THOM. Yes; I see.

Mr. KRUTTSCHNITT. That shows an increase in the taxes on line 1 of 186 per cent. The actual payments on this account, 1907 to 1914, follow:

*Taxes—Statistical abstract.*

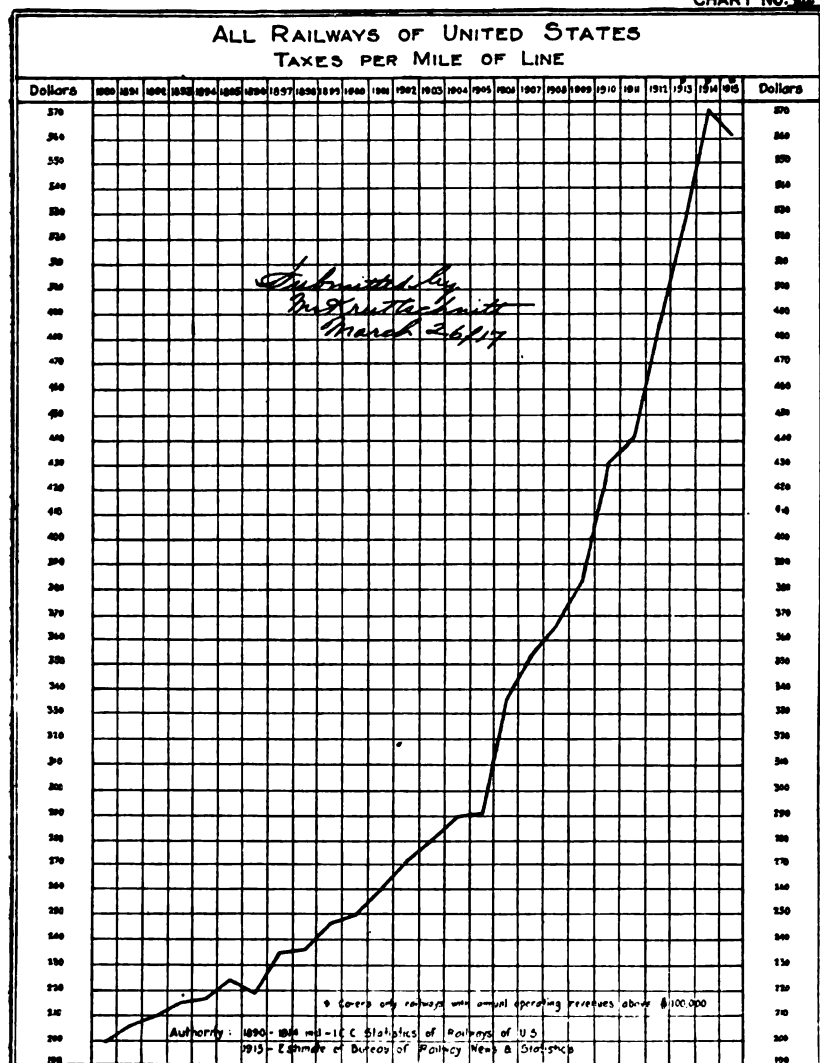
1907.....	\$80,000,000
1908.....	84,000,000
1909.....	90,300,000
1910.....	99,400,000
1911.....	103,900,000
1912.....	115,000,000
1913.....	122,800,000
1914.....	136,300,000

Mr. ESCH. I notice you have starred the last three years—1913, 1914, and 1915—showing the data with reference to those years only apply to roads having an annual operating revenue of about \$100,000.

Mr. KRUTTSCHNITT. Because that is the way they have been published by the commission. We could not get them in any other way.

Mr. ESCH. So that in considering the line from 1890 up to 1913 we have to bear in mind that that does not include the railways with the annual operating revenues?

CHART No. 211



Mr. KRUTTSCHNITT. Yes; but I want to say to you that the aggregate earnings of all of the railroads with annual operating revenues below \$100,000 is so small that it has an inappreciable effect on the general conclusions.

Mr. ESCH. They are the little and weak roads?

Mr. KRUTTSCHNITT. Yes. In other words, they affect the totals very little.

Mr. ESCH. Yet beneficial legislation might help them more than the higher or better roads?

Mr. KRUTTSCHNITT. That is quite true; yet the making of the chart according to the available data does not exclude them from whatever relief Congress might see fit to give them that it would not give to the larger roads.

My aim in charting these expenses and data was to give a picture which, to my mind, is very much more easily absorbed and understood than a vast array of figures which is necessary to produce one of these charts. This is a picture. Anyone can see it at once; and to determine the trend of a sheet of figures requires a great deal of time and labor, and I might say really personal work that the man studying the chart has to give it. Because of the mass of stuff that I have to digest I have been using this system for 20 to 25 years, simply because I found myself mentally incompetent and without the time necessary to study the prodigious number of reports that are represented on one of these sheets.

Senator TOWNSEND. What do you include in taxes there?

Mr. KRUTTSCHNITT. All State as well as Federal taxes. Everything in the shape of taxes, municipal, county, State, Federal, and income taxes, as long as it has applied, as long as it has been in force.

Mr. ESCH. The 8 per cent tax, of course, was not operative when you finished the chart?

Mr. KRUTTSCHNITT. The new income tax?

Mr. ESCH. Yes.

Mr. KRUTTSCHNITT. No; we had no returns from that because the calendar year 1917 is the first year in which the increased income tax applied, and we shall not know what those taxes are until the close of our books after the 31st of December, 1917.

Mr. ESCH. You, of course, anticipate a sharp upward movement of the curve, do you not?

Mr. KRUTTSCHNITT. Unquestionably, a very sharp upward movement. Then comes on another element, the 8 per cent on profits in excess of 8 per cent. The Southern Pacific has a number of outside enterprises; numerous market carrier companies, not railroad companies at all, but oil development companies and others on which no doubt it will have to pay quite a large tax under that new tax law, the 8 per cent tax on the excess over 8 per cent. So that I am afraid, Mr. Esch, that our chart will not hold.

Mr. ESCH. You will not have room enough on the chart?

Mr. KRUTTSCHNITT. We shall have to make another.

Mr. SIMS. Do you proportion your income tax per mile of railroad?

Mr. KRUTTSCHNITT. No, sir; I did not say that this showed the income tax per mile.

Mr. SIMS. If that be added to it—

Mr. KRUTTSCHNITT. I think you misunderstood Mr. Esch's question. He asked me, or rather observed that of course it could not include the increased income tax, the 2 per cent normal tax, and the increases in supertaxes under the new income-tax law. I told him of course it did not, because those taxes are not matured yet.

Mr. SIMS. You were discussing the chart showing the per mile increase taxes?

Mr. KRUTTSCHNITT. Taxes per mile?

Mr. THOM. But that does include the income tax of the normal, of 1 per cent, etc.?

Mr. KRUTTSCHNITT. Yes; it includes everything that has accrued up to the end of 1915. Nineteen hundred and sixteen will no doubt be larger, because the earnings in 1916 were larger, the income tax is based on earnings, and in California the State taxes are based on earnings, so 1916 will be much larger than 1915, and 1917, for the reasons that the two new sources of tax will not appear until then, and that year will be still higher.

Mr. SIMS. But it can only affect the earnings in excess of 8 per cent?

Mr. KRUTTSCHNITT. No; the excess-earnings tax will not affect—

Mr. SIMS. That is, I mean this excess-earnings tax?

Mr. KRUTTSCHNITT. Yes; but the income tax has been largely increased.

Mr. SIMS. I know that, having been obliged to pay a little of it out of my salary every month.

Mr. KRUTTSCHNITT. I thought Congressmen were exempt?

Mr. SIMS. No; they are part of the burden-bearing people of the country.

Mr. HAMILTON. Most of them are willing to pay the tax if they can draw the salary.

Mr. ESCH. And there are a few bachelors.

Mr. KRUTTSCHNITT. This diagram, 10i-1, page 914, shows for the years 1900 and 1915 the relative calls made on a dollar of gross earnings for taxes and other purposes. In 1915 for every 11.2 cents received by the owners the tax collector received 4.5 cents. You will notice that operating expenses one year took 63.4 cents and in the later year nearly 67 cents out of the dollar. Interest on funded debt in the first period was 16.3 cents, in the later period 15.7 cents, or, if added to the other deductions, it took a slice out of the dollar, or out of the pie, if we choose to consider this circle a pie—3.2 cents in 1900 and 4.5 cents in 1915, leaving 11.2 cents in the latter.

Mr. SIMS. If it keeps on as it has been going, how long before it will take the whole dollar?

Mr. KRUTTSCHNITT. I am afraid about February, 1918, the slice of the dollar left and the net income will perhaps require the services of a microscope to find it.

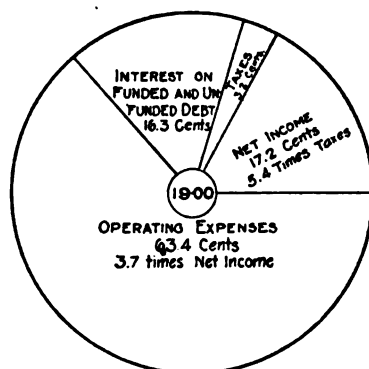
Mr. ESCH. Why in the 1915 charge do you insert a new element, which is deductions, 1.8 per cent?

Mr. KRUTTSCHNITT. Those are copied simply from the Interstate Commerce Commission's statistics on railroads. It is put in simply because they put it in.

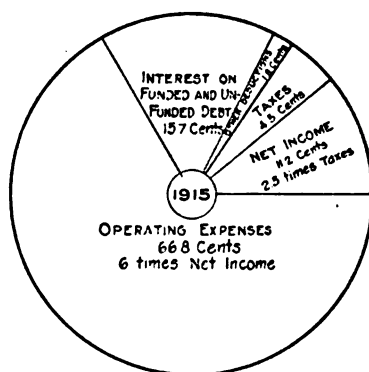
Mr. ESCH. Probably due to the requirements of section 15?

CHART No. 101

ALL RAILWAYS OF UNITED STATES  
DISPOSITION OF EACH DOLLAR OF GROSS RECEIPTS IN 1900 AND 1915



*Submitted by  
Harkness  
March 26/17*



Authority:—I.C.C. Statistics of Railways of U.S.

Mr. KRUTTSCHNITT. In 1900 I presume they did not split up the interest on the funded debt into the two items, and in the later date they did.

In 1900, after paying operating expenses and interest, there was left 20.4 cents of the railroad dollar, of which the tax collector took 3.2 cents, or 16 per cent; and in 1915, out of 15.7 cents left after paying interest and operating expenses, the tax collector took  $4\frac{1}{2}$  cents, or 29 per cent.

You see at that rate it will not take long to take it all.

Mr. SIMS. In other words, there will not be any profit under the present régime?

Mr. KRUTTSCHNITT. I mean unless conditions change.

Mr. SIMS. I mean if it keeps on it is only a matter of calculation, a matter of years, until it will absorb it all?

Mr. KRUTTSCHNITT. Yes; if things go on as they are going on, unchecked, there is no doubt about that.

Mr. SIMS. Do you not think this kind of illumination is liable to reflect on railway credit very adversely?

Mr. KRUTTSCHNITT. What illumination?

Mr. SIMS. Showing what is going on and what will take place without a change? What do you expect the effect will be on value of bonds and stocks?

Mr. KRUTTSCHNITT. All these things are thoroughly well known now. I am only presenting them to you in a way I thought would make the matter clearer.

Mr. SIMS. I am glad to have the illumination; but what I am thinking about is what effect is it going to have on railway credits?

Mr. KRUTTSCHNITT. I have read a good many pages here to show what the effect will be and what the effect has been up to date.

Mr. SIMS. If I had any railway securities, after hearing you read this, I would feel like going out and selling them.

Mr. KRUTTSCHNITT. If you had watched the trend of things, if you had a railway security, I think you might have yielded to your fears before this. There is no secret about this. The operations of the railroads are given the widest publicity; the most intimate statistics are filed right in the office of the Interstate Commerce Commission. Any citizen can go there and see them who has any interest in them, and any man who has any railway securities, no doubt, takes interest enough to either go there and see the statistics or to have some one go there and get him extracts of what he wants to see.

Mr. SIMS. Still, the average market value of stocks and bonds has not declined in proportion to what this would indicate if it had its normal effect.

Mr. KRUTTSCHNITT. But what I am saying here is not revealing any secrets. It is simply stating facts that exist to-day. They are known thoroughly well by investors, by bankers, brokers, and others who make it a business to study operations of railways. So I am not revealing any secrets; I am simply calling attention to facts that are given the widest publicity.

Mr. SIMS. And that this committee ought to know?

Mr. KRUTTSCHNITT. Yes; and that this committee, no doubt, does know to a considerable extent; but I am simply here trying to place this matter in such a way before the committee as to save them a

great deal of time and trouble that would be necessary to work those things up themselves.

Mr. SIMS. I think you are doing exactly what you ought to do: I am not criticizing, I am only asking what the effect will be on the markets of the country by showing the fact that the market is an ever-diminishing one under present conditions.

Mr. KRUTTSCHNITT. I do not think I am injuring railway credits at all by telling that, because bankers, brokers, investors, and a large part of the general public know it now.

Mr. SIMS. Well, if the truth injures them, we can not help it.

Mr. KRUTTSCHNITT. For instance, the Southern Pacific has now about 34,500 shareholders; they know it; they have their annual reports, and their attention is called to these things once a year.

Mr. ESCH. It is true that these statistics are filed with the commissioners and are available, but, as you yourself have said, the latest statistics go back only to 1915, and they are just about two years behind. I never could understand why the commission should be that far behind in developing its statistics of railways, in view of the requirements of section 15 of the Interstate Commerce Commission act.

Mr. KRUTTSCHNITT. I will say this, I have not used them because I can not vouch for them, but the railroads do make a stagger at getting the statistics in a rough form earlier than that.

Mr. ESCH. But the general public, the student of the question, like ourselves, for instance, not interested in any particular road but in the totals of all roads, can not get the available statistics until they are almost 2 years old.

Mr. KRUTTSCHNITT. Your criticism is a correct and a just one. I objected years ago to Mr. Harriman because our accounting department published the statistics for our roads from 40 to 70 days after date. He was not convinced much of the necessity of what I wanted to do until 1907, when the squeeze came, and he was putting questions to me fast and furious about why this was so and why that was so, and without disrespect, I said, "Mr. Harriman, it is impossible for me to tell you until I get the returns from the accounting department, and it may be 40, 50, or 60 days before I can answer you." He got very impatient. When he wanted something he wanted it very badly. He said, "What is the remedy for this?" I said, "The remedy is to get the statistics fresher, quicker." He said, "How can it be done?" I said, "In olden times, before the merger of the Union Pacific, we had methods on the Southern by which the statistics were furnished the operating men much quicker and much fresher," and, without bothering you with the details of the conversation, it ended with his saying, "Go ahead and do whatever you want, but get them." We get the operating statistics now as to what our locomotives are doing and our superintendents are doing 10 days after date, instead of 60 to 70 days after date.

Now, I can only faintly imagine the bulk of stuff that is dumped on the Interstate Commerce Commission by comparing it with the bulk of stuff in the way of statistics that are dumped on me. Our system is 13,000 or 14,000 miles. The Interstate Commerce Commission has to do with the railroads of the United States what I am doing simply for my employers, and, by a rule of simple proportion, the amount of stuff that they require for 260,000 miles of road is twenty

times as great as I get for 13,000 miles of road. I expect the answer is that it is almost a physical impossibility, but it seems to me that some kind of figures could be given for the use of Congress and the public somewhat fresher than those they give now.

As I remember it, there was a statement issued by the commission covering approximate results for 1916 that appeared about two weeks ago, just about the time I completed these memoranda. But that, I think, took in the roads of over \$1,000,000 revenue.

Mr. ESCH. It was only preliminary and the statement was not complete?

Mr. KRUTTSCHNITT. Yes. That is why when I looked at it I rejected it. I told the draftsman, who was preparing these charts, "Do not use that; I do not want to use anything for which I can not give the authority on the bottom of the chart." But I realize the embarrassing position in which you are put, that you have not these statistics, but that is a matter that I suppose the commission might be able to remedy.

Senator TOWNSEND. How often do you make your report to the commission?

Mr. KRUTTSCHNITT. We make a complete report annually, but we make a vast number at shorter intervals. They get full reports monthly from us as to earnings and expenses.

Senator TOWNSEND. Are your annual reports up to date when you make your report?

Mr. KRUTTSCHNITT. Our fiscal year closed, as that of most carriers did, on the 30th of June. Our annual report was ready about the latter part of September—roughly, three months after the close of the year. We do not get all of the monthly statistics complete until about the 20th or 21st of the month following. The statistics that I said we got 10 days after date are those on which we can check up the efficiency of operation by the men in direct charge of the property, but all of the statistics are not ready until about the 20th of the month, and the annual report takes about 40 to 45 days after the close of the last month to prepare. But I would say that the Southern Pacific is such an extremely complicated company, requiring returns from, I think, 112 or 115 different companies, that it takes longer to prepare its annual report than it does of almost any other road in the country.

Mr. THOM. Mr. Chairman, may I make just a brief statement here?

Mr. SIMS (presiding). Certainly; without objection.

Mr. THOM. I think the chairman's question a moment ago is a most important one and is one that has been giving all of us who have a responsibility about this matter great concern. The question was whether or not the stating of these conditions would hurt railroad credit. We arrived at the conclusion in the first place that the truth is due to the public at all times whatever it may be and that nothing is gained either in the public interest or anybody's by an attempted concealment of the real facts, and, in the second place, we felt it our duty as the manifest tendency of these conditions is so apparent to us that we should bring them to the attention of the responsible Government authorities before the collapse actually came, so that the remedy might be applied before the disaster to us, which, as we think, the tendency is inevitable.

Mr. SIMS. You may proceed. Mr. Kruttschnitt.

Mr. KRUTTSCHNITT. Diminishing surplus available for dividends: In 1908, fifty seventy-fourths, or 68 per cent, of all capital stock, paid dividends; in 1915, fifty-two ninetieths, or 58 per cent, paid dividends; and the average dividend rate on all stock fell from 5.4 per cent in 1908 to 3.8 per cent in 1915, or 30 per cent.

The railroads, generally speaking, must finance themselves through securities involving fixed charges and certain returns to the investor. The public is not willing to assume the risks of a partner to contingent profits in enterprises in which it has little control as to management and expenses and none as to revenues. Its returns would be too uncertain, dependent as they would be on the judgment of persons with no sense of responsibility to owners. The trend of capitalization through interest-bearing securities for the last 26 years is thus shown: In 1890 the proportion of funded debt to total capital was 49.78 per cent, and in 1916 it was 65 per cent.

The fixed charges must be earned or the road becomes bankrupt. Large roads with correspondingly large earning capacities whose fixed charges are not more than 50 per cent of their gross income and whose funded obligations do not exceed 70 to 75 per cent of total capitalization are, of course, able to meet reverses in years of low earning with a much greater margin of safety than those whose fixed charges exceed these percentages. The relation between the amount of capital which imposes fixed charges that must be earned under pain of bankruptcy and the amount of capital contributed by the owners and represented by stock, a return on which is not compulsory but is contingent on earnings, should be certainly not more than in the proportion of two or three to one—that is, 67 per cent to 75 per cent—for large companies, and in the proportion of one and one-quarter or one to one—that is, 44 per cent to 50 per cent—for small ones.

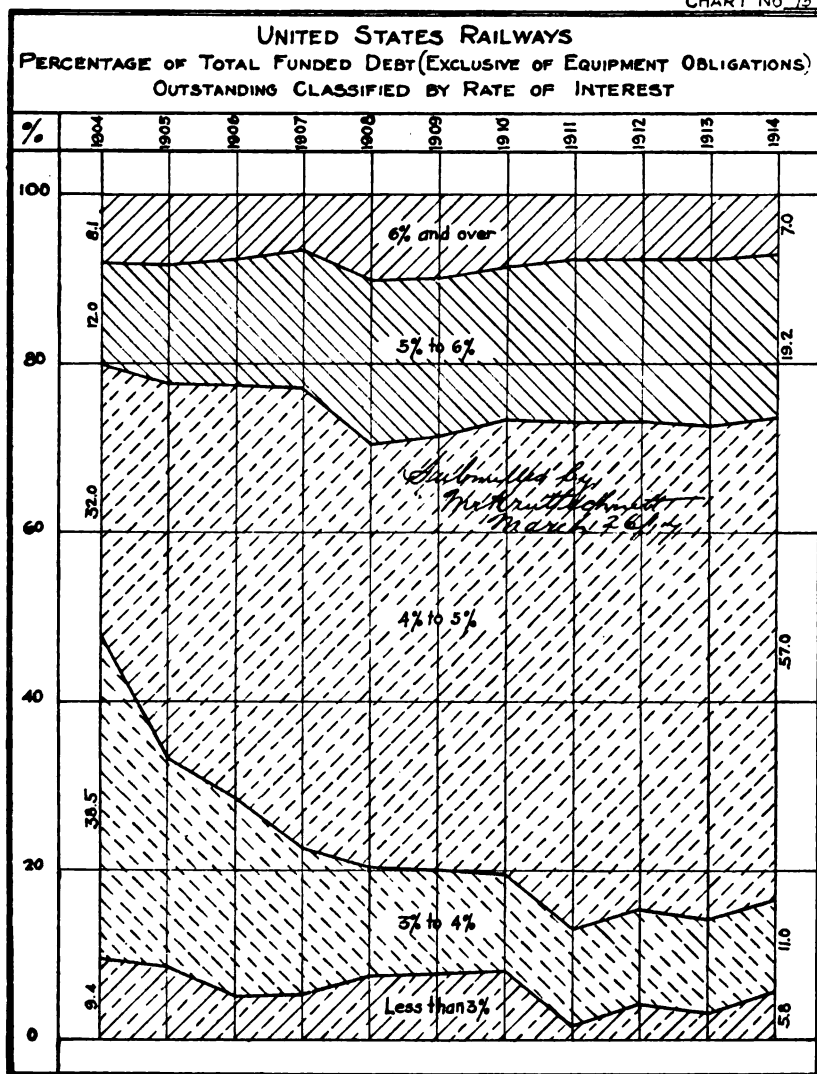
In other words, that margin of safety has been passed as to small companies and it is rapidly being reached as to large ones.

American railways are never complete. They are growing organizations and need sustenance for both growth and operation like a boy. Grown men can reduce their intake and maintain their output, but boys and railways suffer under such conditions. Yet our system of regulation forbids the railways to charge rates sufficient both to earn income on capital and to provide funds for growth. The facts approved by experience are antagonistic to the theory that earnings on railways should approximate earnings on investments.

The safe proportion of fifty-fifty for small roads is now largely exceeded in American railroad capitalization, and the rapid trend upward in late years is a danger signal that inspires caution if not alarm in investors' minds. We show elsewhere why, under present conditions, there is little or no opportunity of financing by stock issues. A large percentage of railroads earn no dividends at all, and the average dividends for a period of years of all the railroads of the country is so small that the margin above fixed charges is not sufficient to make railroad bonds as attractive as they should be. The result is the railroads have to pay larger interest charges to secure money than if their incomes were better assured.

Chart 15, page 919, shows for 1904 and 1914 the changes in rates of interest on funded debts.

CHART No. 15



*Percentage of total funded debt (excluding equipment obligations) at different interest rates.*

	3 to 4 per cent.	4 to 5 per cent.	5 per cent. and over.
1904.....	38.5	32.0	20.1
1914.....	11.0	57.0	32.3

Mr. SIMS. Did you make an average for both periods there?

Mr. KRUTTSCHNITT. I did not make the average. On my own copy I find some pencil scratches here that I made after the chart was complete—that the average rate on all funded securities in 1914, the latter year, was 4.6 per cent.

Mr. SIMS. What was it on the first date mentioned, if you have that?

Mr. KRUTTSCHNITT. I can compute that, Mr. Charmain. I have not done it, but I will do it and will give it to-morrow if the stenographer will put it in.

Regulations should be based on normal conditions and not on abnormal ones, such as prevailed in 1916, that have grown out of an unusual volume of traffic traceable to the European war.

I have put a few figures as to the returns on our own company from the date of its organization:

Average capital stock of Southern Pacific and proprietary companies during 31½ years, since its incorporation in 1885.....	\$288,742,000
Average annual surplus over fixed charges, or only 4.19 per cent on capital stock.....	12,102,000
Property investment, 1885.....	409,000,000
Surplus reinvested in property to date.....	192,100,000
Money derived from sales of securities and invested in property..	589,500,000
Total.....	1,190,600,000
Surplus over fixed charges, 1916.....	29,950,000
Return on property investment, per cent.....	2.51

Rates which applied to abnormal volume of traffic in 1916 yielded a surplus of about \$30,000,000 would imperil dividends with a considerable decrease of volume and the present scale of operating expenses.

The public's greatest interest is in adequate transportation facilities and not so much in low rates, which as to most commodities bear a very small percentage of their cost. Excluding low-grade commodities the percentage of the freight rate to cost is so slight as to offer no justification to the dealer to substantially raise prices to the consumer. For example, California oranges can frequently be purchased at as low a price in New York and Chicago as in California; and it is a custom with tradesmen, such as greengrocers, grocers, etc., to pay the freight on purchases, delivering them for considerable distances around large centers of population at the same prices as they charge for city delivery. It may be stated with little fear of contradiction that the consumer seldom, if ever, profits from a lowering of freight rates. The middleman pockets whatever reductions his organized efforts can procure from commissions. The small influence of freight rates on ordinary purchases is shown on the chart I have already placed before you, 10-g.

Unquestionably the public interest requires that railroads should be put on a more stable basis than they now occupy.

New construction has been falling steadily because investors have found railroad securities unattractive and will not purchase them except at rates of return that the railroads can not promise. Chart 21, page 922, shows that less than 1,000 miles were added to operated mileage in 1915, a smaller number than in 1865, just after the end of the Civil War, or than in 1849, 66 years prior to 1915.

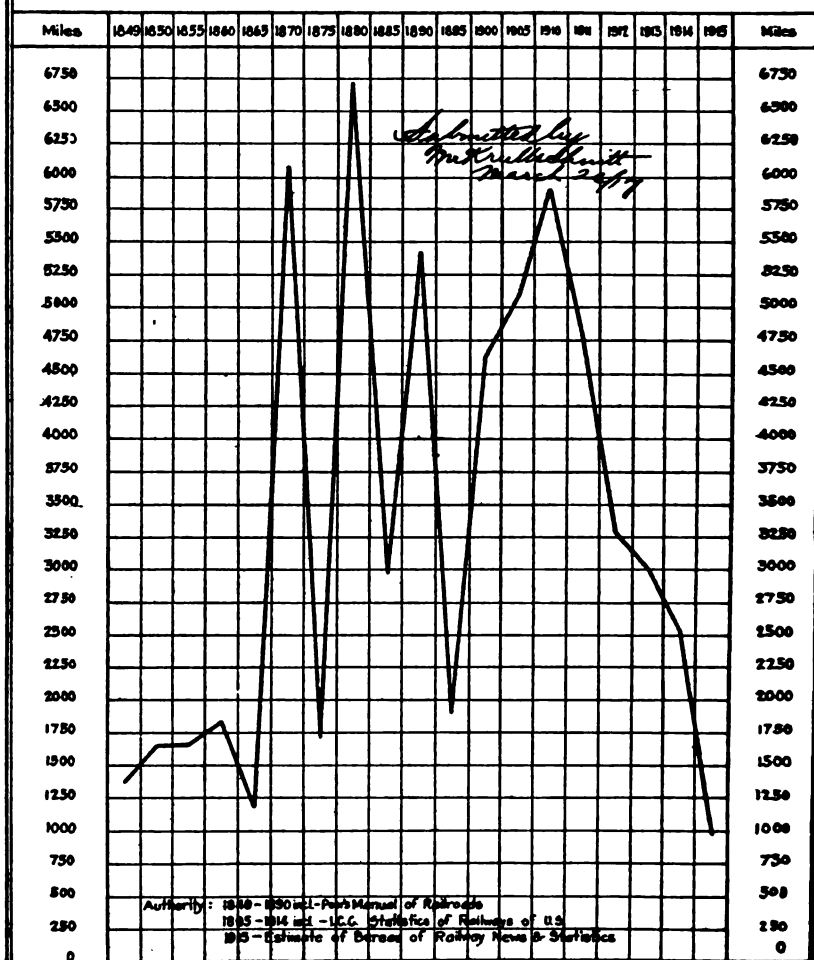
According to theorists and regulators, railway dividends should resemble mortgage interest, and rates should be reduced to bring that about. We see the result. Dividends on a mortgage rate do not attract speculative capital, and speculative capital is necessary to produce railway transportation in advance of its demonstrated necessity. There never was a scarcity of transportation when railway capital was allowed to earn good profits. On the contrary, there was a surplus of such size that it was thought the country could do with less. That is the root cause of the present situation, which reduces general trade and profits to an extent making the savings on rates to shippers not worth consideration. The railroads of the country have been kept up to the proper standards of safety, but improvements without which the railroads can not keep up with the times and give the best service possible have been sparingly made because of lack of money, lack of control of their operations through the assumption of management by commissions and Government bodies, and the general paralysis caused by fear of what the future may have in store. Efficiency of management is checked by deprivation of many means to increase it. The lack of control over earnings by inability to get their inadequacy recognized by commissions and the necessary relief through increased rates at times when the volume of traffic is small prevents the carriers from providing increased future facilities or looking ahead sufficiently into the future. The result is that in times of very heavy traffic many much-needed improvements are wanting, and purchases such as equipment and power at the present time are improvidently made at exorbitant prices. From 1900 to 1915, \$9,600,000,000 new capital has been put in the railways, or \$640,000,000 per annum, which has not sufficed to make all the additions and improvements required for the highest efficiency.

Bearing the expenditures in mind which have been already made and realizing that a large additional amount will be necessary to provide for the desired adequacy of transportation facilities and for the refunding of maturing debt, it is necessary for the responsible railroad managers and for the statesmen of the country to form some estimate of the capital requirements during, say, the next 10 years. It is, of course, impossible to be accurate in making this estimate. Mr. James J. Hill a number of years ago estimated that \$1,000,000,000 per annum would be necessary. Some have estimated that a very much larger amount would be required. Without undertaking to accurately state any amount, it is obvious that the necessary capital requirements to keep the railroads abreast of the times and to provide for the refunding of maturing obligations will be enormous, almost staggering to the imagination. And the question is: Where is this money to come from? Under existing conditions have the railroads the credit to secure it?

CHART No. 27

# ALL RAILROADS OF UNITED STATES

## INCREASES IN MILEAGE OF RAILWAYS OPERATED



Records of the Pacific Car Demurrage Bureau, operating on the Pacific coast, show that the average detention by consignees of cars in the State of Oregon is approximately 50 per cent greater than the detention in the State of California, where the railroad commission has permitted a sufficiently high demurrage rate to be charged to secure the prompt unloading of cars. In the period of from February to November, 1916, 76,200 cars were required to handle the State and interstate traffic in the State of Oregon, while if the cars had been handled under California demurrage rules 71,430 cars would have handled the traffic, a saving of 4,770 cars, or 6.7 per cent.

The California commission has been very cooperative with the carriers in bringing about a better use of rolling stock, and this measures the difference between the rules they allow and the rules prescribed in Oregon, the adjoining State.

Mr. SIMS. The railroads themselves do not fix their own demurrage charges; they are not permitted to do so?

Mr. KRUTTSCHNITT. Only under the approval of the commissions.

Mr. SIMS. That is Oregon?

Mr. KRUTTSCHNITT. Yes.

Mr. SIMS. Is that general throughout the United States?

Mr. KRUTTSCHNITT. Yes. It is also under the Interstate Commerce Commission. The railroads can only propose demurrage rates, but they can not put them in force until filed with the commission.

Mr. SIMS. Therefore different States have different demurrage rates?

Mr. KRUTTSCHNITT. Yes.

Mr. SIMS. I mean it is possible for them to have?

Mr. KRUTTSCHNITT. It is actually so in California and Oregon.

Mr. HAMILTON. The action of the Federal commission on these demurrage propositions—is it reasonably prompt, or is that again a case of congestion of work?

Mr. KRUTTSCHNITT. It is a case of delay; though in the emergency that existed this year the commission did act more promptly than usual.

Mr. HAMILTON. How more promptly than usual? Could you measure that in some way, so that we can get an idea?

Mr. KRUTTSCHNITT. I think about October or November, 1916, the complaints about congestion and inadequacy of car supply became very acute, and the American Railway Association appointed a commission to sit in Washington—a commission of their own selection—to take up matters with the Interstate Commerce Commission to secure a prompter release of cars, and what they proposed was a large increase in the demurrage rate for detention of cars after the free time and an increase in what is known as the "per diem rate"; that is, a rate that the roads pay to each other for the use of cars. The commission, after considering the matter a while—I think at first they refused to increase the demurrage rate at all—suspended the rate for five or six months; afterwards, at the instance of this American Railway Association Commission, the matter was taken up again; the Interstate Commerce Commission said that if there were a large increase made in the rental payments of one road to another, they would sanction an increase in the demurrage rate, which was done, but not to the extent asked by the carriers; in other

words, it was a compromise. The demurrage rate was made larger, but not enough larger, in the opinion of the carriers, and the per diem rate was increased from 45 cents to 75 cents a day on interchange of cars.

Mr. HAMILTON. By "free time," do you mean the time during which freight is permitted to remain upon the cars before demurrage takes effect?

Mr. KRUTTSCHNITT. Free time is the time allowed without demurrage.

Mr. HAMILTON. Yes. That is what I was trying to get at.

Mr. KRUTTSCHNITT. Yes.

Mr. HAMILTON. How is the free time determined?

Mr. KRUTTSCHNITT. That is determined by the carriers, who file the rates with the commission.

Mr. HAMILTON. Is there any uniform arrangement throughout the country as to free time?

Mr. KRUTTSCHNITT. No.

Mr. HAMILTON. That depends upon the locality?

Mr. KRUTTSCHNITT. Yes; it varies very considerably.

Mr. THOM. Some of the States fix it absolutely, as an act of initiation by the State authorities.

Mr. HAMILTON. Then there is a conflict between the Federal commission and the various State commissions as to demurrage and free time?

Mr. KRUTTSCHNITT. As I remember it, the carriers are required to put that on their tariffs, which are filed with the Interstate Commerce Commission; and my recollection is that all of that free time and demurrage has to be approved or, rather, not disapproved by the Interstate Commerce Commission, because it is a part of the tariff.

Mr. THOM. Yes; but the Virginia rule is made as to intrastate traffic by the Virginia commission, without the initiative of the carriers at all.

Mr. ESCH. I think the Car Service Commission rules, which are now enforced by the Interstate Commerce Commission, provide two days' free time; then a dollar a day, with an additional dollar for each succeeding day, up to a maximum of \$5.

Mr. KRUTTSCHNITT. My recollection is that the California rate begins with either two or three dollars and rises; but it has been most efficient in preventing car delays, and I can add that there has been, singularly, little objection or friction with the public because of it, the public seem to have accepted it, and it is working perfectly smoothly, and releasing cars much more rapidly than in adjoining States.

Mr. ESCH. Some States enforce reciprocal demurrage, but I do not think that has ever been established by the Car Service Commission or indorsed by the Interstate Commerce Commission.

Mr. KRUTTSCHNITT. I think you are right about that.

Mr. SIMS. About the car shortage in the northeastern Atlantic coast territory, one of the commissioners before our committee, my recollection is, said that they were enabled to relieve it largely by the cooperation of the railway companies serving that section, and that they cooperated to the extent of doing that which they could not be compelled to do either by law or regulation.

Mr. KRUTTSCHNITT. That is correct. This car commission that has been sitting in Washington has been clothed with such authority that very few railroad managers dreamed six months ago that railroads would ever agree to such a thing; but there is a very strong sentiment in the American Railway Association that emergencies warrant emergency measures, and although car commissions had not theretofore been given such plenary power as this commission possesses, the measure was voted through in the face of, I must say, a great deal of opposition, to give this commission sitting in Washington a free hand, permitting them to cooperate with the Interstate Commerce Commission and secure the support of their authority, in doing things that the railroads theretofore had never agreed to do; and I know that the Interstate Commerce Commission recognizes that the car commission, voluntarily created by the carriers, has been of great service in relieving the congested conditions.

Mr. SIMS. And that the railroad companies acted without any reference to their respective gains or losses for that period of time.

Mr. KRUTTSCHNITT. That is what I meant to say; but you have expressed it better than I did—that is to say, they sank all considerations of technical rights; they did a great many things that under ordinary circumstances they would not agree to at all.

Secret rebates, charging less than published rates, and discriminations between individual shippers are the evils which mainly led to the enactment of the interstate-commerce law, and they have been practically eliminated by the law. Such offenses so rarely figure in the reports of the commission or of the courts that they may now be regarded as an almost extinct species of evil. The discriminations of the present day are mostly presented by controversies between localities to which the real parties are competing markets or competing fields of production. The carrier is simply the medium through which the rival claimants bring their dispute before the commission. There is another significant feature in the matters which are beginning to come before the commission. I refer to complaints calling for increased service and enlarged facilities. Unlike the other classes of complaints, these demands for cars, especially designed equipment, and additional facilities involve expenditures and require increased revenues. The railroads will soon become judgment proof in respect to orders rendered in such complaints unless some way is found to increase their earnings and borrowing capacities.

There is a serious menace to effective regulation in the tendency on the part of the commissions to exercise the functions of management; in other words, to substitute their judgment on purely business propositions for the judgment of railroad managers.

No system of legislation or government regulation can be characterized as wise which shows passion, vindictiveness, unwillingness to give proper consideration to the rights of that part of the public that owns the railroads, which ignores constructive measures intended to insure the stability, adequacy, and growth of the instrumentalities of commerce and confines itself to mere infliction of penalties and to the assumption of management and control of the properties instead of their regulation; in other words, substituting the judgment of public officers not responsible to anyone for the condition or efficiency

of the property, for the judgment of the directors who are the representatives and trustees of the shareholders.

Extortionate charges are a thing of the past, and in aiming to cut rates to their lowest possible figures the interest of the whole public in the character and standard of transportation is subordinated to the interest of that part of the public only that profits by lowering rates; that is to say, the shippers and their agents and not the general public, the ultimate consumers. Chart No. 10h-2 shows the constant fall of passenger and freight rates since 1895.

Passenger rates per mile have fallen from 2.04 cents to 1.98 cents, or 3 per cent.

Freight rates per mile have fallen from 8.39 mills to 7.3, or 13 per cent, and in the same period operating expenses per train mile have risen 93 per cent. (Chart No. 10h-4.)

The interests of shareholders of railroads, the holders of their bonds, and the general public are all subordinated to the interests of organized labor and shippers. On account of the marked preference of the public to other than railroad investments it would seem that the time had come when a careful review should be made of regulation, of its benefits and shortcomings.

Investments must be attractive. People can not be forced to invest money where they do not desire to do so. Perfectly safe investments with larger returns than from railroad securities can be made in the stock of national banks, which are closely but reasonably and intelligently regulated by the Federal Government—in agricultural and other business—manufacturing, shipping, mining, etc. (Chart No. 10.)

	Per cent.
Return on railway stocks, 10-year average.....	4.6
Return on national-bank stocks, 10-year average.....	10.9
Return on two sugar stocks, 1917.....	14.5-18
Return on zinc mining stocks, 1917.....	16
Return on machinery-manufacturing stocks, 1917.....	16
Return on steamship-company stock, 1917.....	18
Return on petroleum-company stocks, 1917.....	20
Return on two copper-mining company stocks, 1917.....	48-50

I might add what has come out since I wrote this: That a steel corporation shows a return on its capital stock of between 48 and 49 per cent for the last past year.

Mr. SIMS. The United States Steel Co.

Mr. KRUTTSCHNITT. Yes.

Mr. SIMS. What does the Bethlehem Steel Co. show in the way of profits for the same time?

Mr. KRUTTSCHNITT. I do not know. I mentioned the steel company because they have published their results. They published them about a week or 10 days ago.

The time has come when in the public interest constructive regulation and encouragement must be substituted for destructive regulation and repression. A strong editorial in the *Manufacturers' Record*, February 15, 1917, calls attention to the present crisis in railway affairs thus:

Ten years ago, statistically reviewing the percentage of growth in railroad and business traffic in the United States, the *Manufacturers' Record* predicted a complete physical breakdown of our railways system unless \$10,000,000,000 should be expended within 10 years for increasing our transportation facilities at least 50 per cent, without counting in this the usual expenditures for maintenance of track and equipment.

That prediction is now fulfilled.

The railway system of the country has broken down.

This vital factor in the business life of the country, and in national safety if war should come, has practically collapsed, since embargoes on freight are being issued in every direction, traffic is congested, manufacturing enterprises are hampered, and all business is restricted.

The great problem before the American people to-day, because it is as vital to safety in time of war as to prosperity in time of peace, is how to find the billions that must be expended for an enormous expansion of railroad interests. We are squarely up against this problem, the magnitude of which legislators, National and State, financiers, business men, and even railroad people themselves, have not heretofore seemed to adequately grasp. Delay can not be endured longer without great disaster. How shall we meet the problem is the Nation's question.

Mr. SIMS. You have quoted that. I suppose you regard it as correct?

Mr. KRUTTSCHNITT. Substantially so; yes. Government regulation should unquestionably possess the elements of simplicity and homogeneity to the greatest extent possible consistent with the public interest. That it does not possess these qualities at the present time is evidenced by the following:

In 1911 the Railroad Commission of Louisiana petitioned the Interstate Commerce Commission to remove the discrimination against Shreveport in the rates to and from points in Texas, which existed because the carriers were forced by the Texas Railroad Commission to establish unusually low rates to and from Dallas and Houston, and because the carriers maintained what they considered reasonable interstate rates in and out of Shreveport. The Interstate Commerce Commission decided in March, 1912, that the rates were discriminatory against Shreveport and ordered the discrimination removed, and on appeal to the Supreme Court the order was sustained, and it was found that as the Interstate Commerce Commission had not found the interstate rates unreasonable the carriers would be justified in removing the discrimination by increasing the intrastate rates.

In August, 1914, the Louisiana commission requested the Interstate Commerce Commission to make a similar order in regard to rates from Shreveport to all points in Texas, and the relief was partially granted. During this same period efforts of the Texas carriers extending over a number of years resulted in the Texas commission granting increased rates on a limited number of commodities, but after the decision of the Interstate Commerce Commission the Texas commission expressed its displeasure by canceling all authority previously given to advance rates, and a bill has been introduced in the legislature by the attorney general of Texas, providing that if any common carrier after March 1, 1917, shall disobey or otherwise refuse to comply with any requirements of any statute of Texas, or of any rate, rule, or regulation of the railroad commission, it shall be deprived of the benefit of any law of Texas and no Texas court shall entertain jurisdiction of any cause filed by it, or secure or enforce any privilege or power claimed by it; and the charter of such corporation shall also be subject to forfeiture.

Senator TOWNSEND. Do you know what the status of the bill is now in the legislature?

Mr. KRUTTSCHNITT. It has not come up to vote yet.

Another case is what is known as the Houston-Galveston differential. The Texas commission, after informal conferences with a number of the carriers in or about 1911, stated to them, unqualifiedly, that unless the cotton rates from Texas to New Orleans were made 10 cents higher than the current rates to Galveston that they would reduce the rates to Galveston 10 cents per 100 pounds, with exception of Texas and Pacific and some of its connections, the object being to prevent the export of Texas cotton through the port of New Orleans.

Mr. SIMS. That is any port outside of Texas, is it not?

Mr. KRUTTSCHNITT. Yes, sir; I said that was the object, because I knew what it was. But they were not particularly aiming at New Orleans. What they wanted was to force the cotton through Galveston.

In 1913 arrangements were made with bankers for the sale of two-year notes of the Southern Pacific Co. at a satisfactory price, to meet the cost of improvements. Authority of the California Railroad Commission to issue the notes was obtained without delay, but the Arizona attorney general objected to the commission approving the issue unless litigation relating to a 3-cent fare bill be abandoned and unless a new station should be built in Phoenix, or that a definite part of proceeds of bond issue be allocated to Arizona. During the delay imposed by the action of the Arizona commission the condition of the money market had so changed that the proposed two-year note issue was abandoned and one-year notes, not requiring the approval of the Arizona and California commissions were issued instead and sold at prices yielding approximately \$275,000 less than would have been received had the delay not occurred in issuing the two-year notes.

The following is taken from an article appearing in the March, 1917, number of Railway and Marine News, of Seattle, entitled "Railroad regulation reaches limit":

One State requires cuspidors in passenger cars. Adjacent States prohibit this practice. This State is traversed by carriers passing through the "cuspidor" State. One State requires screens in the windows of passenger cars, and these cars traverse States where screens are forbidden. Indiana requires all locomotives to be equipped with automatic "bell ringers." It also specifies that cabooses must be at least 20 feet long—the usual length being 18 feet. To comply with the law in Indiana the railroads have spent \$800,000.

The tendency to long and continuous lines of railroad is sound from an economic standpoint and is thus in the public interest.

Unquestionably long and continuous lines of railroad can give better service and get better use out of equipment than a number of short ones of the same aggregate length. The Sunset Route of the Southern Pacific Co. was the pioneer in excellence of transcontinental service. The Sunset Route, composed of the Southern Pacific rail lines between California and Algiers, La. (a Mississippi River terminal opposite New Orleans), and its steamship line between New Orleans and New York, was opened February 1, 1883.

Prior to that time the all-rail lines were consuming at least 30 days in transportation of freight from coast to coast, each all-rail route being composed of two or three separate connecting lines between which there was no common interest or effective cooperation. Through billing had not been established and claims were not paid

until it could be ascertained to what part of the route the liability was allocated, thereby consuming many months in settlement.

The time inaugurated by the Sunset Route from coast to coast was about 18 or 20 days. Through billing was established and both overcharge and loss and damage claims were paid upon presentation when supported by evidence of carrier's responsibility without waiting to determine what part of the route was responsible. A system of notices to consignees of the dispatch of their shipments was adopted, and the time was so uniform and dependable as to enable them to determine with reasonable accuracy when their goods might be expected to arrive.

By this superior service, the major part of the coast-to-coast business was soon attracted to the Sunset Route, which after a while had the effect of stimulating the various component parts of the all-rail routes to a coordination of effort which resulted in a gradual improvement of the all-rail service from year to year until it caught up with the modern methods and services of the Sunset Route and overcame the ascendancy of that route because of physical disabilities, such as transfer en route and steamship versus rail terminal facilities at New York, which it was impossible for the Sunset Route to surmount, although in the meantime the Sunset Route kept up an improvement of its service by increasing the number and speed of its ships, enlarging its terminal facilities at New York, and expediting schedules on the rail portion of the route, so that the through time from coast to coast was reduced to from 12 to 14 days; and ever since the opening of the route it has been a continuous competitive spur to an improvement of the service of all-rail lines, to the great benefit of the shipping public.

This tendency due to the natural operation of economic laws which demand that transportation facilities shall accommodate themselves to the requirements of commerce is a desirable condition.

The existence of these long and continuous lines of railroad under a single management is in the public interest, and is justified by sound economic considerations, and there should not exist conflicting powers of governmental regulation over different parts of the same line of railroad or over different functions of the same line of railroad.

Since the present dual system of governmental regulation of railways was adopted, American railways have, practically speaking, ceased to be local or state facilities in the sense they formally were, and have in substance become highways for interstate and international business, and governmental regulation should recognize this fact and the policy of treating these facilities, which have now become national in their importance, as still local or State facilities in many of their substantial and controlling aspects should be abandoned.

Under a system of private ownership, the standards of efficiency and the maintenance of efficiency of an instrumentality of commerce are dependent on its earnings—in other words, high efficiency can not be continued without adequate earnings.

There should be but one public authority to determine what in the public interest the proper standard of earnings and efficiency shall be.

If the States have the power to fix rates and to determine the standard of service as to State business of a railroad company also

engaged in interstate and foreign commerce, they may, in cases where no question of discrimination against interstate or foreign commerce is involved, fix the State rates high enough to escape the line of confiscation but so low that no substantial contribution will be made by State business to the maintenance of the standard of efficiency deemed essential in the public interest by the Federal authorities.

This is answered by an explanation of the action of Texas in the Shreveport rate case.

Such a power on the part of the State involves the power either to fix the standard of efficiency of these instruments of commerce, contrary to the views of the National Government and to the views of other States, or to throw the burden of establishing and maintaining a high standard of efficiency on interstate and foreign commerce and on the commerce of other States.

This is not in the public interest.

A power to thus prejudice the interests and to obstruct the policy of other States can not be justly left to one of the States. It should be the right of each State to demand that no other State shall possess the power to determine a question in which both States have this important interest.

These important questions should be determined, not by one of the States which may have a different interest or a different policy from the others, but by the National Government acting for and on behalf of all the States, and thus alone able to act impartially between them.

Some of the influences tending to impede development of railroads and to interfere with free flow of commerce have been brought to my attention and have been explained already. For instance, the Shreveport rate cases, the action of the Arizona commission in respect to two-year notes, and the reduction of the Galveston-Houston differential.

Now we come to the detention of cars at seaports. The annual report of the Interstate Commerce Commission, recently issued, says:

The uncertainties as to ocean transportation have made it unusually difficult to secure expeditious or regular movement of export traffic through the ports, and this led to great congestion with consequent delay of equipment at the ports and on the lines leading thereto.

This condition was more serious even in the early part of 1916 than it is in 1917. The trouble is due to the fact that existing tariffs permit freight cars to be held at seaports 15 and sometimes 20 days before and charge for demurrage is made. Much of the congestion in both years has resulted through failure or inability of shippers to provide vessels to take care of their tonnage after it reached destination.

Records of the Pacific car-demurrage bureau operating on the Pacific coast, show that the average detention by consignees of cars in the State of Oregon is approximately 50 per cent greater than the detention in the State of California, where the railroad commission has permitted a sufficiently high demurrage rate to be charged to secure the prompt unloading of cars. In the period of from February to November, 1916, 76,200 cars were required to handle the State and interstate traffic in the State of Oregon, while if the cars had been handled under California demurrage rules 71,430 cars would have handled the traffic, a saving of 4,770 cars, or 6.7 per cent.

Mr. HAMILTON. I do not want to deviate from the rule of the committee, but I should like to ask a question for information.

Mr. SIMS. Without objection, you may do so.

Mr. HAMILTON. How is it that this free time as to seaports is different from the free time at other places?

Mr. KRUTTSCHNITT. The free time at seaports is made large to allow for the uncertainty in the arrival of ships to take the freight from the cars.

Mr. HAMILTON. And who fixes this free time at seaports?

Mr. KRUTTSCHNITT. That has been fixed by carriers and filed with the commission.

Mr. HAMILTON. The Interstate Commission—the Federal Commission?

Mr. KRUTTSCHNITT. The Interstate Commerce Commission; yes, sir.

Mr. HAMILTON. Thank you.

Mr. SIMS. Proceed, Mr. Kruttschnitt.

Mr. KRUTTSCHNITT. The failure of consignees to promptly unload cars themselves, an abuse of long standing, as consignees who have not provided and who can not obtain warehouse room for their commodities, deliberately plan to pay the small demurrage that has heretofore been charged in order to use freight cars as warehouses. In paying this small charge they not only obtain the use of a warehouse but the use of the ground on which the car stands, which is no doubt cheaper to them than to provide facilities themselves. The Interstate Commerce Commission, however, acted with commendable promptness in relieving this situation by sanctioning substantially higher demurrage rates that became effective about the middle of December.

I would say, in further answer to your question about the seaport free time, that is one of the troubles the carriers experience; that if they wish to vary their free time, change it, they can not do it without the commission's approval. If an emergency exists and ships can not be gotten, and the carriers know it, nevertheless they can not change this free time because it is incorporated in their tariffs, and it requires a long time to get that permission, and before the permission can be gotten probably the emergency has either passed or the trouble has cured itself.

Mr. SIMS. Right there, do you know what free time is allowed in foreign countries for cars to be loaded on to the ships—foreign countries doing business with the United States?

Mr. KRUTTSCHNITT. I do not; but as an indication of that I can relate this incident: Shortly after the outbreak of the European war, and before the date when everything in sight was being blown up, we were urged by the cotton shippers of Louisiana and Texas to send a few ships of our fleet to foreign ports with cotton as a relief. We did so. Our ships are unloaded at their termini, New York and Galveston, in about 36 hours, and they are loaded in about 36 hours, so that from the time of arrival of a ship to her departure does not exceed from 70 to 80 hours. We dispatched one of the ships to Gothenburg, in Sweden, and to unload that ship that in America was unloaded in 36 hours, required 12 days at Gothenburg, with a captain fussing all he knew how to expedite matters.

Mr. HAMILTON. What year did you say that was in?

Mr. KRUTTSCHNITT. That was just after the breaking out of the European war; I should say in the latter part of 1914 or early in 1915.

Mr. SIMS. I did not know but that possibly the demurrage charges for exports in foreign countries and ours were somewhat similar.

Mr. ADAMSON. I should like to know what constituted the great difference. Was it the cheap foreign labor, that was less effective than our labor, which caused the delay in unloading and loading?

Mr. KRUTTSCHNITT. I did not inquire, Mr. Chairman, as to just what the cause was. The captain made a brief report to the manager of the line to explain his long absence, and that was sent to me, and I read it; and that fact made an impression on my memory—that what we in America were doing in a day and a half took nearly 10 times as long to do in Sweden. We have a great many Swedish laborers on our docks. I do not know whether the atmosphere in this country affects them or not, but I suppose they are the same kind of people that unloaded the ship in Gothenburg.

Mr. ADAMSON. I thought possibly that accounted for it—that, due to the fact that wages were lower in foreign countries, they did not do as much as our laborers.

Mr. HAMILTON. I do not think that the chairman will be able to draw any general deduction from this single incident.

Mr. ADAMSON. It is only a concrete fact that I am trying to learn.

Mr. HAMILTON. I notice some make a greater impression than others.

Mr. ESCH. Might not that long delay be due to a lack of dock facilities?

Mr. KRUTTSCHNITT. No; the vessel was at dock all the time.

Mr. ESCH. And she used her own unloading facilities, I suppose? She has her own hoists, and all that?

Mr. KRUTTSCHNITT. Yes; the same that we used in America. There were scandalous delays to ships for want of dock facilities in Great Britain and other allied ports, but that was not the case at Gothenburg. Our ship got a dock promptly.

And, by the way, that scandalous delay of ships—the ability of ships to dock at Liverpool and London—was the beginning of the trouble in this country, of congestion. Congestion really started in London and Liverpool and worked back this way.

Mr. SIMS. Was it a delay involving moral turpitude? You used the expression “scandalous.”

Mr. KRUTTSCHNITT. No; that is not a proper word. I mean it was outrageous—that vessels would lie in the stream sometimes 6, 8, or 10 weeks waiting for a berth.

Railroad transportation is perhaps the one most important essential of national defense after the collection of adequate land and naval forces. For instance, in moving troops to the Mexican border from June 1 to October 31, 1916, the Southern Pacific lines operated 326 special trains, consisting of 2,522 passenger and sleeping cars and 2,635 freight cars, in which 98,357 troops with their luggage and accouterments were transported. In emergencies arising out of the necessity of moving troops for national defense, occasions will arise when saving a few hours may be vital, and unless the railroads can accumulate a reserve of passenger vehicles it appears reasonably certain that if any very large number of soldiers would have to be

moved in the United States, it would be at the expense of service to the public, which would probably have to be discounted entirely during the period of mobilization just as was done in England, France, and Germany in the present war.

In July, 1870, the mobilization of the French troops covered the carriage of 300,000 men, 65,000 horses, 6,600 guns and road vehicles, and 4,400 wagonloads of ammunition and supplies in 19 days intervening between July 16 and August 4. The German concentration, for which six railroad lines were available, was made in 11 days between July 24 and August 3, and covered the transportation in 1,200 trains of 350,000 men, 87,000 horses, and 8,400 guns and road vehicles.

I only give those figures on the mobilization in the great war of 1870 to compare with what was done in our own country, to show the relative number of trains, the relative number of men, and the way in which the work was done. In other words, the work of the American roads was not at all discreditable when compared with what had been done on the European roads in 1870.

Mr. THOM. In listening to you I understood that the European figures related to this war. It was the war of 1870?

Mr. KRUTTSCHNITT. It was the war of 1870. I tried to get figures for this war, but most diligent search failed to reveal them.

Mr. ADAMSON. I suppose they are all censored yet; the censors will not let them out yet, I suppose?

Mr. KRUTTSCHNITT. I suppose that is true, though I thought I had seen in general reading some figures relating to it; but, as I say, I could not find them when I was preparing this memorandum.

Senator TOWNSEND. You would not think that that would be a fair comparison, comparing railroads of 40 years or more ago with railroads now, would you?

Mr. KRUTTSCHNITT. No, sir; but further on I give the opinion of the President of the United States and the Army officers as to what the American roads did.

Mr. HAMILTON. In 1870, the Prussian roads had gone into the control of Prussia, had they not?

Mr. SIMS. No.

Mr. KRUTTSCHNITT. The Prussian roads, I think, had been State roads for a great many years at that time, and ever since.

Mr. HAMILTON. I was thinking that at least part of the roads of Prussia had gone into State control at that time; but I am not dead sure.

Mr. ESCH. No; that was Bismarck's policy after the war for the unification of the Empire.

Mr. SIMS. Yes; it went in afterwards.

Mr. HAMILTON. Yes; but Prussia does not own the rest of the roads of Germany. The other States own their roads, except for 300 or 400 miles in Alsace and Lorraine.

Mr. KRUTTSCHNITT. That may be true, but I should have said that all the roads of Germany are Government-owned roads. Some are owned by Prussia, some by Hanover, and so forth.

Mr. SIMS. Do you mean that in 1870 they were all Government owned?

Mr. HAMILTON. No; he says now.

Mr. KRUTTSCHNITT. I did not look up that fact as to whether they were all State roads in 1870. I do not know.

I read a short quotation from a most interesting work that has recently appeared, called "Rise of rail power in war and conquest, 1833-1914," by Edwin A. Pratt, bearing on this subject. After touching on the importance of uniform gauge and physical connections between the different systems the desirability of double track on all important lines, and the necessity of a very liberal provision of passing tracks and a sufficiency of sidings at all stations where troops are to be detrained or entrained he advises that preparations in advance should include:

I. The carrying out of a scheme of organization based on recognition of the following principles: (a) That, while the railway is an instrument capable of rendering great and even incalculable services in the conduct of war, the working of it is a highly skilled business only to be intrusted to those possessed of the necessary experience; (b) that interference with such working on the part of military officers not possessing the requisite technical knowledge of the details and limitations of railway operation may result in chaos and disaster; (c) that railway men in turn are not likely to be fully acquainted with the technicalities of military conditions and requirements and should not in any case be left with the responsibility of having to decide between the possibly conflicting demands of various military authorities; (d) that for these reasons there should be coordination of the military and the technical railway elements operating throughout the whole scheme of organization in its manifold details, avoiding conflict of authority, insuring harmony of working, and offering the fullest guaranty that all military requirements will be met so far as the capacity of the railway, together with a due regard for safe and efficient operation, will allow; and (e) that effect can best be given to these various conditions by the appointment of intermediary bodies which, representing the dual elements, shall alone have power to give directions or to make demands in respect to military rail transport during the continuance of war.

II. Collection of data concerning the physical character, resources, and transport capabilities of the railways both in the national territory and in any other country to which the war operations may extend.

III. Study of all movements of troops, etc., likely to be necessary on the outbreak of war; the preparation of special time tables for the running of troop trains, etc., and the working out of all essential details respecting military transport in general.

IV. Creation and training of bodies of railway troops qualified to undertake the construction, destruction, repair, and operation of railways in time of war. Great masses of troops can be entrained only at stations where facilities for their so doing have been prepared in advance. The provision of these facilities is even more necessary in the case of cavalry or artillery than in that of infantry. Hence the movement of considerable bodies of troops may be restricted to certain lines, and their entrainment or detrainment even to certain large stations. In the case of road marching these restrictions would not apply.

Vehicles specially constructed for the purpose can alone be used on railways. Any deficiency in their supply must needs cause delay.

Substantially all the foregoing has been followed in our country by the appointment of a general chairman and four regional committees of railroad presidents by the American Railway Association to cooperate with the War Department and department commanders as to measures concerning national defense.

The paramount need of cooperation between the transportation companies and the Government and the inevitable congestion resulting when it is wanting is strikingly outlined by Pratt in describing the mobilization of the French armies in 1870, thus:

All this activity on the part of the railway companies was, however, neutralized more or less by the absence of any adequate organization for regulating and otherwise dealing with the traffic, so far as concerned the military authorities themselves.

Typical of the general conditions as they prevailed not only in Paris, but elsewhere in France, were the circumstances under which the Nineteenth Army Corps, of 32,000 men, 3,000 horses, and 300 guns, was sent from Cherbourg to Alençon. The troops were late in arriving at the station; the officers neglected to look after the men; the men refused to travel in goods trucks; orders and counter-orders succeeded one another in rapid succession; two or three hours were required for the dispatch of each train and delays occurred which must have disorganized the traffic all along the line.

Great as the confusion undoubtedly was at the points of dispatch, it was far surpassed by that which prevailed at stations to which trains were sent regardless of any consideration as to whether or not they could be unloaded there with such dispatch as to avoid congestion. \* \* \* There were, consequently, many stations close to the frontier where the rails leading to them were occupied for miles together by loaded wagons, the number of which was being constantly added to by fresh arrivals. Many of these wagons were, in fact, used as magazines or storehouses on wheels.

I would say paranthetically that I have put these quotations in, although they relate to operations in 1870, to show how strikingly similar the conditions as to army transport are to the conditions on the seaboard at the present time that are causing our present congestion. In other words, they are strikingly similar.

MR. SIMS. The word "wagon" there means a car, does it not; what we would call a car here?

MR. KRUTTSCHNITT. No, sir; they call cars "trucks." "Wagons" mean the wagons in which the army supplies are loaded.

MR. SIMS. The same as we have here?

MR. KRUTTSCHNITT. The same as you have here; that would be run up on a flat-car and carried bodily.

MR. SIMS. I have seen the word "wagon" in reading referring to a car.

MR. KRUTTSCHNITT. Well; they do use that also; but here they seem to have used the words "goods trucks" for that.

He goes on—

It suited the officers or the military department concerned to keep the supplies until they were wanted in the wagons, and this arrangement may have appeared an especially desirable one from their point of view because if the army moved forward or backward, the supplies could be more readily moved with it if they were still in the wagons. \* \* \*

It was evidently a matter of no concern to them that the wagons they were detaining might be wanted elsewhere, and that, for lack of them, other troops might be experiencing a shortage in their own supplies.

Here he does use the word "wagon" in the sense of a car.

MR. ESCH. I think that is the sense in which it is used in the quotation before. He says that the rails were occupied for miles by loaded wagons.

MR. KRUTTSCHNITT. That is right; he does mean a railroad car.

MR. ESCH. Is this Pratt an English authority?

MR. KRUTTSCHNITT. Edwin A. Pratt; he has written two books—this one, called "Rise of Rail Power in War and Conquest," and the other is, I think, called "Railway Transportation."

MR. ESCH. There is an English authority by the name of Pratt.

MR. KRUTTSCHNITT. It is that man, because I had to send to England for these books.

These conditions are strikingly similar to those now existing on United States railway lines east of the Mississippi River, where freight has been moved so rapidly by the railways that the receivers (in this case, however, the public and not the Army) can not, or will

not, unload the cars until their contents are actually required, which has resulted in an accumulation so great as to paralyze the power of the carriers to serve the public.

The wisdom of the plans drawn up for the mobilization of the Regular Army and the National Guard at the time of the threatened trouble with Mexico, and as amplified at the present time in expectation of mobilization in case of trouble with European powers, is confirmed by England's example. She placed the operation of her railways entirely in the hands of a committee of railway officials at the beginning of the war, and all of her calls on them have been promptly and efficiently met.

Finally, it is all-important to the national defense that the standards of railroad efficiency should be established in times of peace. Practice mobilizations should be made from time to time, as is done in Europe.

Under proper rules, I do not believe the transportation facilities in America are inadequate to handle the increased business due to the war in Europe, but I do believe that under the conditions of operation and rules for penalizing delay to equipment and expediting unloading of freight prescribed by Government bodies they are totally inadequate to handle the increased business. A given conduit may be adequate to deliver a certain quantity of water at a given pressure, and it can be made to deliver twice the amount by doubling the velocity; but this doubled delivery is not possible if the rate of outflow is obstructed and the water prevented from leaving the conduit as fast as it reaches its end. Emergency rules are required in emergencies. The railroads can not reduce free time at destination, can not increase demurrage without the permission of commissions, and if the proposed rules are held in suspense from three to six months it is evident they can not be of the slightest use in the emergency that prompted their imposition.

It is important to the national defense that in times of peace the standard of railroad efficiency should be established, so that in times of war the railroads could be readily made available for the purposes of national defense.

Notwithstanding what I have said, I think it perfectly obvious that the railroads of the country have not been able, with the credit which they have had at their command, to keep their facilities up to the standard required by the national defense in preparation for any serious war. Neither in equipment, nor in tracks, nor in yards and terminals, nor in strength of bridges, have the transportation facilities of the country been kept up to a standard which would render them reasonably capable of doing their part in an important national emergency. As transportation is at the foundation of successful national defense, it seems manifest that the National Government, which is charged with the duty of national defense, should also have the power of fixing the standards of efficient transportation in times of peace as well as in times of war—otherwise the Nation might perish while the preparations are being made.

As the duty of national defense rests upon the National Government, transportation is so essential to the national defense that the National Government alone should have the power to fix the standard of railroad efficiency.

The duty of national defense carries with it the duty to fix the standard of railroad efficiency by the National Government, which should provide for its wants through the existing operating organization of railroads and should not substitute its operating rules and judgment for the existing rules and judgment of officers now operating the properties.

The standard of railroad efficiency can not be established and maintained by the National Government unless it has the power to deal with all questions of railroad credit and railroad policies as far as they are within governmental control.

In view of the constitutional power and obligation of the Federal Government as to the regulation of interstate and foreign commerce, of the Federal Government's responsibility for the national defense, and in view of the necessity for prompt and harmonious governmental action in respect to security issues, there should be a single governmental system of regulating security issues of carriers engaged in interstate and foreign commerce, and this power should rest in the National Government alone.

For the purposes of national defense alone the railroads of the entire Nation should arrange to place their facilities at the disposal of the Government and to operate them as a unit.

A standard of earnings such that in prosperous years an adequate surplus may be laid up to carry the railroads over the lean years, without the necessity for any diminution of the work of maintenance and improvement, and without the necessity for a suspension of reasonable returns to those whose means have created the instrumentalities of commerce, should be permitted.

Under normal conditions and with a volume of business such as moved in 1916, the earnings of most railroads would be adequate to pay fixed charges, fair dividends, and some surplus, but the railroads should be able to do this with absolute certainty in order to make their securities attractive, and the rates should be sufficient so that when applied to the volume of business carried in lean years, fixed charges, dividends, and some surplus—though small—will be earned, an adequate surplus being provided by averaging the small surplus in lean years with the larger surplus yielded by an increased volume of business, without increases of rates in the prosperous years. (See p. 2176, figures for Southern Pacific Co.)

In view of the power of regulation which is exerted by the Interstate Commerce Commission over carriers engaged in interstate and foreign commerce, which, of course, involves a power to prevent abuses, there is no reason for the application to railroad companies of the antitrust laws.

This is especially so in view of the necessity for commerce from all sections to move on relatively equal terms and of the fact that, commerce being continuous over several lines of railroad, there must be an understanding as to through rates. These considerations involve the necessity for traffic officers to meet and to agree upon rates and terms of service, subject, of course, to the approval of the Interstate Commerce Commission.

There is no reason for the application to railroad companies of the antitrust laws, inasmuch as they are closely and absolutely regulated by Government authority. The rates from and to all important points are the same, regardless of the route over which the traffic

is carried, so that the only competition amongst carriers at the present time is in excellence and certainty of service. The public interest certainly could not be affected by permitting railroad officers to meet to agree upon rates, terms of service, schedules, etc., subject to the approval of the Interstate Commerce Commission.

As the continued operation of railroads is essential to the public welfare, the laws should not permit such operation to be interfered with either by combinations of capital or by combinations of labor.

The laws should bear just as heavily on combinations of labor as they do on combinations of capital. There should be no discriminations.

As investments of capital are by law required to be subject to the public obligation to keep the railroads in operation, the law should attach to labor, when it enters into this public service and enjoys employment in it, an obligation not to combine to prevent the operation of these facilities which are essential to the public welfare, it being, of course, understood that no law should undertake to limit the freedom of individuals in respect to service or terms of employment, but only to prevent combinations and conspiracies to unlawfully obstruct or interrupt public service.

The railroads, being public servants, should be kept in operation by laws that would hold all employees, whether designated as officers or laborers, to a strict accountability and should prevent either one or the other from combining to prevent the operation of the roads by conspiracies or other unlawful acts.

If in the public interest labor should be thus deprived of the power of combination for the purpose of preventing the operation of a public facility, the law should deal with the question of wages, so that the system may be balanced by preventing the oppression of labor by capital and the oppression of capital and the public by combinations of labor.

I have a very wretched cold and inflamed throat.

Mr. ADAMSON. I think the committee will be glad to yield to you here, if you desire.

Mr. KRUTTSCHNITT. I am very near through. If you will permit the reading of this answer that I told Mr. Hamilton I had prepared about regulating trouble with employees, I should be glad to have my secretary read it.

Mr. ADAMSON. It is hardly time to adjourn; but if you are feeling uncomfortable—

Mr. SIMS. It is within 25 minutes of the time.

Mr. KRUTTSCHNITT. I will ask my secretary to read it.

Mr. ADAMSON. That is perfectly satisfactory to me.

Mr. KRUTTSCHNITT. This is the memorandum I mentioned as having been consolidated, taking in several memoranda made by me within the last four or five years. I will ask my secretary to read it.

I do not see how the law could fix the wages of railway employees unless the Government should take over the railways.

The act of Congress approved June 15, 1913, known as the Newlands Act, providing for mediation, arbitration, and conciliation in controversies between certain employers and employees, is a great improvement on the Erdman Act, which it superseded, but it relates to employees engaged in train service or train operation only of common carriers engaged in interstate commerce. Its usefulness would

be greatly increased if it were made to apply to all railway employees engaged in the interstate business of the employer, including those engaged in keeping in repair cars, locomotives, appliances, machinery, track, roadbed, and other instrumentalities of interstate commerce. The Board of Mediation and Conciliation appointed by the President, under the act, has proven useful in maintaining industrial peace, but, as it frequently results, as a consequence of invoking the services of the board, that railway expenses are increased, it is very important to the carriers that the board should be closely coordinated with or, better still, subordinated to the Interstate Commerce Commission, so that the same authority responsible for increasing expenses of the carriers should at the same time incur a corresponding responsibility for providing revenue to meet the expenditures. The reasonableness of such a provision is apparent when the complete control of revenues and almost equally complete control of expenditures by the Government at the present time is considered.

The Newlands Act provides that when a controversy arises either party may apply to the Board of Mediation and Conciliation for its adjustment, and the board may offer its services to the parties in controversy where interruption to public service is imminent. There is no obligation, however, other than a sense of obligation to the public, on either employer or employee to submit differences to mediation. Instances have occurred where mediation and arbitration have been stubbornly refused, with utter disregard of the public's interest and rights, and the act offers no remedy. This defect could apparently be remedied, as is done in the Canadian industrial disputes investigation act of 1907, which makes a combination, lockout, or strike illegal until the questions at issue shall have been thoroughly investigated and made public; and there should be a provision that where the board offers its services for investigation, mediation, and conciliation it shall be obligatory on and not optional to the parties to submit their differences, so that the public may judge the dispute intelligently.

The desirable feature in the Canadian act is that it compels investigation and publicity, and peace pending investigation and paves the way, as the Newlands Act does, to arbitration, which, however, is optional with the parties to the dispute.

Report of the United States Board of Mediation and Conciliation, November 1, 1916, shows that from the passage of the Canadian disputes act in 1907 up to October 18, 1916, a total of 212 disputes were referred for adjustment under its provisions. The total number of boards of conciliation and investigation established under the act was 182, the remaining 30 being settled without the establishment of boards. The number of disputes where a strike was not averted or ended was 21. The report states, "In approximately 90 per cent of the cases brought under the act, therefore, its provisions were effective so far as actually preventing strikes was concerned." The report adds that an inquiry of the Canadian authorities in 1915 as to the outcome of strikes which occurred legally after the reports of the boards if investigation had been made showed that settlements were "ultimately effected closely, if not wholly, on the lines recommended by the boards."

In a report dated December 9, 1912, on the industrial disputes investigation act of Canada, 1907, made by Sir George Askwith, chief industrial commissioner to the British Board of Trade, and presented to both Houses of Parliament of Great Britain, the purposes of the act are defined as follows:

The simple purpose of the act is to insure the recognition of the interests of the public as a third party in trade disputes and the insistence that that third party, through the Government, shall have a voice in regard to a dispute affecting their interests, and, according to the act, before a stoppage of work takes place. In practice the recognition extends to cases arising before or after a stoppage of work. While this principle of the recognition of the public interest in trade disputes is emphasized in the act, the actual interference with the parties in the settlement of their differences is sought to be reduced to a minimum by the act being confined—

1. To industries whose uninterrupted continuance is of high importance to the well-being of the nation (mining, railways, shipping, and other public utilities); and

2. To a brief suspension of the right to stop, as distinct from a complete prohibition of stoppage.

And further on occur the following views, which are as applicable to our country as they are to Great Britain:

\* \* \* And I think that it might be feasible in the United Kingdom, with advantage to both employers and employed, to give opportunity for such investigation and recommendation as would bring into light the real causes of difficulties and create in the public mind and in the minds of employers and employed the opinion that when opportunity exists by law such opportunity should be taken advantage of, and that strikes and lockouts ought not to be commenced, and certainly not supported by "sympathetic" strikes, while such investigation and recommendation are pending. Investigation and recommendation would not be necessary in all cases and could well be confined, at any rate in the first instance, to cases in which the public were likely to be seriously affected.

From the point of view of the public the advantage of such a course is obvious. The public have no use for strikes or lockouts, and such a course might reasonably be expected to lessen their number. While the public might often have much difficulty in bringing opinion to bear in favor of acceptance or rejection of technical decisions, which in many trades it would be impossible for persons who had not examined the question to understand, their support to the principle that the ordeal of battle should give place to reasonable judgment would probably be emphatic and frequently effective.

From the point of view of the employers such a course need not interfere with the administrative details of business or discipline but should give better opportunity for regular and consecutive business by reducing the number of strikes, by bringing strikes to an earlier conclusion, and by the powerful effect which I am convinced would result in the direction of rendering unnecessary and ineffective the progress of those sympathetic strikes by which employers having no quarrel with their own workmen are now so frequently disturbed.

Reports of the satisfactory operation of the Canadian act and a conviction that like benefits would accrue through the adoption of some of its provisions in the United States induced me to send an assistant to Canada in September, 1914, to learn at first hand from the managers of Canadian railways and from the Canadian department of labor their experience with the operations of the act. The opinion alike of railway executives and of the commissioner of labor was that their disputes and investigation act was satisfactory and very successful in preventing lockouts and strikes. In discussing the results of our observations with the executive heads of 11 of our important railway systems the opinion was expressed, without exception, that the provisions of the Canadian act were most helpful in the interests of employers, employees, and the general public, the three parties to every industrial disturbance.

If such a plan were adopted the board should be charged not only with the duties of mediation and conciliation, but also with the duty of securing settlements of all questions at dispute, not on the basis of making concessions that would dispose of the matters for the time being only, but on the basis of justice to employer, employee, and to the general public. The chairmanship of this board should certainly be a permanent position, so that the incumbent should become thoroughly familiar with labor contracts, which have grown to be extremely complex. The Interstate Commerce Commission should name a member, the Federal Trade Commission a member, the railways one, and the employees one. As the last two would admittedly be partisan, the decision would rest with the permanent chairman, the member from the Interstate Commerce Commission, and the member from the Federal Trade Commission. The public would thus have three representatives, and its interests would seem thereby to be fully protected.

That, briefly, was the plan that seemed to me to offer most promise of settling these industrial disputes.

MR. ADAMSON. Now, have you completed—

MR. KRUTTSCHNITT. The principle underlying it is simply this—compulsory investigation and compulsory publicity. There is nothing forbidding labor unions to strike after they have gotten through with this, if they wish, but the operation, I might say, just across the fence in our neighbor's country shows it has been extremely successful in stopping strikes. In one or two strikes that they have had, despite the efforts of these mediation committees, the strikes have afterwards been settled substantially on the same terms as suggested at first by the committees.

MR. ADAMSON. You have not finished your direct statement, have you?

MR. KRUTTSCHNITT. Yes; except one or two things that I wanted to bring out.

MR. ADAMSON. I thought you were weary, and it occurred to me that the committee might excuse you for the day, if you were uncomfortable.

MR. KRUTTSCHNITT. The time is very nearly up, and I should appreciate it.

MR. THOM. Before you adjourn, I sent for the copy of the laws of Illinois of 1913, in order to answer accurately a question asked by Judge Sims as to the nature of the imposition by the State of Illinois in regard to issues of securities.

MR. SIMS. On the New York Central?

MR. THOM. On the New York Central; yes. The law on this subject is found in the chapter entitled "State public utilities commission," which is the act approved June 30, 1913, which went into effect January 1, 1914.

After providing in section 23 of that act that any securities therein mentioned which should be issued without the order of the commission authorizing the same, then in effect, shall be void—

MR. ADAMSON. Will you please repeat that statement, please.

MR. THOM. In section 23 of this act that I alluded to there is a provision that all stocks and every stock certificate and every bond, note, or other evidence of indebtedness of a public utility not payable

within 12 months, issued without an order of the commission authorizing the same, then in effect, shall be void, unless issued upon the authority of any articles of incorporation, etc.

Now, in section 31, the tax or fee, or whatever you call it, is imposed, and I shall read that section now. Section 31—it is entitled at the head of it, "Fees for issuance of stocks or bonds," and the text of the section is:

The commission shall charge every public utility receiving permission under this act for the issue of stocks, stock certificates, bonds, notes, and other evidences of indebtedness, an amount equal to 10 cents for every \$100 of such securities authorized by the commission, and the same shall be paid into the State treasury before any such securities shall be issued.

Now assume that is imposed in pursuance of the taxing power of the State.

Mr. SIMS. In other words, it is a tax.

Mr. THOM. They call it a fee, but I think it is a tax.

Mr. ADAMSON. We will adjourn now until 10.30 o'clock to-morrow.

(Whereupon, at 1.25 o'clock p. m., an adjournment was taken until to-morrow, Tuesday, March 27, 1917, at 10.30 o'clock a. m.)

# INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT CONTROL AND REGULATION.

**TUESDAY, MARCH 27, 1917.**

UNITED STATES SENATE,  
JOINT SUBCOMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The joint subcommittee met at 10.30 o'clock a. m., Hon. William C. Adamson (vice chairman) presiding.

Mr. ADAMSON. The committee will come to order. Mr. Kruttschnitt, are you ready to proceed?

Mr. KRUTTSCHNITT. Yes, sir.

## **STATEMENT OF MR. JULIUS KRUTTSCHNITT—Continued.**

Mr. KRUTTSCHNITT. I want to take a very short while in commenting on some of the statements made by Mr. Thelen, president of the California State Railroad Commission. There is a quotation he makes on page 431 of the hearing, from the *Financial Age*, entitled "Evidences of railroad prosperity," to show how well the railroads were doing. Those figures relate to 1916, an extraordinarily good year, and they only take in a number of large systems that did extremely well. If you take the statistics of the Interstate Commerce Commission, covering all the roads of the country, instead of showing 10, 11, 16, 18, and so on, per cent available for dividends, we find that the average rate on all railroad stock for the year 1915, which is the latest for which the commission gives data, is a fraction under 4 per cent.

Mr. SIMS. All railroad stocks; par value?

Mr. KRUTTSCHNITT. All railroad stocks.

Mr. SIMS. Par value?

Mr. KRUTTSCHNITT. Par value. It is fair enough to show that some railroads are very prosperous. I do not deny that; but to draw a general conclusion for the railroads of the country we should take the statistics covering all.

Mr. SIMS. Those statistics that Mr. Thelen gave there could only come up to October. The article in the *Financial Age* was published in October, 1916, and did not include all for 1916.

Mr. KRUTTSCHNITT. The quotation is dated October 21.

Mr. SIMS. Then it could not have figures later than that.

Mr. KRUTTSCHNITT. Yes; he could have figures for the year ending June 30, 1916.

Mr. SIMS. Oh, you mean the fiscal year.

Mr. KRUTTSCHNITT. Yes; the fiscal year.

Mr. SIMS. The fiscal year of 1916 was half of it 1915 and half of it 1916, in fact?

Mr. KRUTTSCHNITT. Yes; but until the recent order of the commission making the fiscal years coincide with the calendar years the practice was almost universal with the carriers to make their fiscal years end on the 30th of June.

A great deal of what Mr. Thelen says there is true, as to the pleasant relations between the California commission and the carriers. I want to say that of all the State commissions we have ever had anything to do with we have found the California commission the most progressive and most conservative and reasonable to deal with.

Mr. SIMS. Such a statement on your part necessarily strengthens Mr. Thelen's statement. I suppose—that is, that they are reliable?

Mr. KRUTTSCHNITT. Yes, sir. As to some of his statements he is in error, and I just wanted to point them out.

Mr. ADAMSON. But you applied to the California commission two descriptive words that in modern parlance are usually held to be contradictory to each other—"conservative" and "progressive."

Mr. KRUTTSCHNITT. Yes; that is perhaps a proper criticism. What I meant was that they were conservative and not seeking to pull down and destroy.

Mr. ADAMSON. I did not mean it as a criticism.

Mr. KRUTTSCHNITT. And by "progressive" I meant that they are up to date and alive to the necessity for improvements and safe methods, and so on.

Mr. ADAMSON. They go ahead prudently?

Mr. KRUTTSCHNITT. Yes, sir.

Mr. ADAMSON. I did not mean it as a criticism, but simply to call your attention to it in order that you might make a more explicit statement about it.

Mr. KRUTTSCHNITT. There is an old, very apt Latin criticism which I remember from school days, which is to "make haste slowly," which fits it.

Mr. ADAMSON. Some other old American patriarch has said, "Be sure you are right and then go ahead."

Mr. KRUTTSCHNITT. Yes.

Mr. SIMS. He did not say go ahead too fast, though.

Mr. ADAMSON. Be sure you are right and it does not make any difference how fast you go.

Mr. HAMILTON. Let me ask you this, before you pass to what you have in mind: Have you prepared or are you going to insert in your statement a list of the railroads that were not taken into consideration in Mr. Thelen's statement as to dividends?

Mr. KRUTTSCHNITT. No; I did not intend to do that. His statement covers a quotation from a New York financial paper, taking in about 15, as I should take it, large roads and very prosperous ones. The commission's statistics take in all the railroads of the United States.

Mr. HAMILTON. Precisely. So it is easier to differentiate, taking your statement into consideration with his. I understand.

Mr. KRUTTSCHNITT. Yes, sir; the statement I give is based on the latest copy of the Interstate Commerce Commission's Statistics of Railroads of the United States.

Mr. SIMS. But do you insist that the percentage of earnings based on par value is a fair way to look at the matter? Some stocks are

above par and some below—I mean the market value—some of them are above par and some below.

Mr. KRUTTSCHNITT. You must necessarily make some standard on which to base the returns.

Mr. SIMS. Take the market value of the stocks.

Mr. HAMILTON. That is fluctuating, is it not?

Mr. KRUTTSCHNITT. If you stated, for instance, that a stock was paying 4 per cent, and it was selling at 50, paying 2 per cent, no one would know exactly what was meant. But if you say a stock is paying 4 per cent, it is universally understood that you are referring to the par value of the stock, which is well-nigh universally 100. There are some stocks lower, but in such cases, both in the reports of the stock market and in conversation, you would specify par value 25 or 50. But they are very unusual; there are very few roads that have par values of less than 100.

Mr. SIMS. Very few, you mean, of the whole number of roads?

Mr. KRUTTSCHNITT. Yes. I say the practice is almost universal to have the par value 100.

Mr. SIMS. I know; but the market value of the stocks?

Mr. KRUTTSCHNITT. The market value varies from day to day, and you might say from hour to hour.

Mr. SIMS. Well, the average.

Mr. ADAMSON. You are not talking about returns on the market value of the stock?

Mr. KRUTTSCHNITT. No; I mean the par value.

Mr. HAMILTON. We have got to have some standard for comparison.

Mr. KRUTTSCHNITT. Senator Phelan speaks of a certain number of roads here to show the activity of railroad construction in California, to show that construction is active and reasonably rapid. He gives, for instance, the Panoche Valley Railroad. That railroad has not been built. It is nothing but a spur to a magnesite mine. It was projected, but has never been built. The Martinez & Concord, one of his other roads, is dead. The California Southern, 20 miles, is a little spur of the Santa Fe. The Patterson & Western is another spur to a magnesite mine, not a regular railroad. It is a spur from the Southern Pacific. The Hetch Hetchy road is a road built to carry the materials up into Hetch Hetchy Valley for the San Francisco city water development.

Mr. HAMILTON. Will that road cease to exist after the water development is completed?

Mr. KRUTTSCHNITT. Presumably.

The Fresno Interurban is a short road built for sale, is for sale, and I know can be bought very cheap. It is on the bargain counter.

Mr. HAMILTON. You referred to a road back there as dead. What did you mean by that?

Mr. KRUTTSCHNITT. It has been abandoned. The project has been abandoned; nothing done.

Mr. HAMILTON. No track laid, even?

Mr. KRUTTSCHNITT. No; it was projected, but nothing has been done.

The Tidewater Southern was another small road built in the San Joaquin Valley southward from Stockton, notably for sale, and it has been sold to the Western Pacific.

The Indian Valley road is a copper mine spur.

Those are the ones referred to by Mr. Phelan. There are others that he did not refer to. The San Diego & Arizona, in his narrative testimony, he said had been revived, I think, by the California commission. I thought it had been revived by the Southern Pacific, as we made arrangements with the owners and projectors of that road some time to acquire a half interest in it and to finance it. The road had stopped, after constructing part of its mileage, on account of difficulty in obtaining money.

There is the Northern Electric Railway, finished some time ago, a system of 152 miles, that was for sale and in bankruptcy a few months after it was completed. There was the Western Pacific Railroad that has recently been through bankruptcy. The Tidewater Southern I have referred to. He referred to 16 miles. I have here 33 miles that they completed, but that has all been sold to the Western Pacific.

The Ocean Shore Railroad, of 54 miles, down the Pacific coast from San Francisco to Santa Cruz, was notably built for sale, and it went into bankruptcy a few months after its completion. I speak advisedly because the projectors of the road several times came into my office jokingly and said that we would buy that road sooner or later. I told them I thought not. We had made the surveys, had them on file, and knew that the road was impracticable; yet they built it.

In Texas there is the San Antonio, Uvalde & Gulf, of 360 miles. that was in a receiver's hands almost as soon as it was completed.

There is a short road built very near San Antonio, from McDonough Station, on our line, southerly. That road was in difficulty from the beginning in getting money; and it is unique, perhaps, in being a road that was offered as a gift twice and refused. It was offered to our road as a gift, without payment of any money, if we would operate it. I told them we could not afford to take it.

The Lake Charles & Northern road is a little road that was in very sore straits in Louisiana and was bought by us some years ago.

There is the Yosemite Valley road, of 78 miles, built from a station on our line in the San Joaquin Valley, up to the entrance of the Yosemite Valley, that was also built for sale, the promoters stating that we should buy it sooner or later. It is not in bankruptcy, because it has rich friends, but it has for many years been on the bargain counter.

I have had sent me the rates of money borrowed by proposed and existing steam roads in California, gotten from the annual reports to the State railroad commission, to show by the rates at which the bonds are taken by the public, the measure of the desirability of those bonds. There is the California Western Railroad & Navigation Co., which sold bonds during the year ending June 30, 1915, at a price which yielded  $6\frac{1}{4}$  per cent. The Death Valley Railroad sold bonds in 1915 and 1916 at prices which yielded  $6\frac{1}{4}$  and  $6\frac{1}{4}$  per cent. The Nevada County Narrow Gauge sold bonds in 1915 on the basis of  $6\frac{1}{4}$  per cent. The Western Pacific first-mortgage bonds, due March 1, 1946, sold quite recently at a price to yield  $5\frac{1}{8}$  per cent. The Nevada, California, Oregon Railway sold bonds in 1915 and 1916 on a basis to yield  $7\frac{1}{4}$  and  $7\frac{1}{4}$  per cent.

Mr. SIMS. Are those long time or short time bonds?

Mr. KRUTTSCHNITT. I can not give you that, except as to the Western Pacific. Their bonds are due in 1946.

Mr. SIMS. That 7 per cent bond that you referred to, that is what I am asking about.

Mr. KRUTTSCHNITT. I have not their term. I assume they are reasonably long periods, because the term "notes" is generally used when they mature in a very short period—from 2 to 10 years.

Mr. SIMS. Is that 7 per cent road a solvent road, the one that sold bonds that would earn seven and some odd per cent?

Mr. KRUTTSCHNITT. I think that is the Nevada, California & Oregon. I should say now, as part of the road has been sold to the Western Pacific quite recently, that the owner called on me about a month ago and told me that he was at the end of his rope, and he had to sell a piece of the road in order to keep the other piece. It was not prosperous; it was very much the reverse.

Mr. HAMILTON. Just in what relation to Mr. Thelen's testimony, will you state, have you referred to these railroads?

Mr. KRUTTSCHNITT. A good deal of Mr. Thelen's testimony is taken up in showing that the influence of State regulation is benign and fosters railroad construction and railroad prosperity. I did not refer to it particularly, because the answer is almost self-evident. He takes, for instance, the Santa Fe and the Southern Pacific to show how prosperous they were. Neither line has a very large percentage of its mileage in California. The Southern Pacific has perhaps 20 to 25 per cent of its total mileage in California, but the other 75 or 80 per cent is in other States; and the same with the Santa Fe.

Mr. SIMS. And the roads that you have just referred to are not prosperous roads, and a greater percentage of them is located in California?

Mr. KRUTTSCHNITT. They are all in California, except where I stated otherwise. I mentioned a road in Louisiana and several roads in Texas.

Mr. SIMS. But they are weak and short, not prosperous roads, as a rule?

Mr. KRUTTSCHNITT. Yes, sir.

I think, Mr. Chairman, that is about all I wish to say.

Mr. ADAMSON. Judge, do you want to cross-examine?

Mr. SIMS. You are chairman of the committee.

Mr. ADAMSON. I have not heard all of his statement, and I will defer my examination.

Mr. SIMS. I would suggest that the Senator be permitted to lead, as he was last the other day.

Mr. ADAMSON. Senator Townsend, you are the only Senator present, I think. I yield to you to cross-examine.

Senator TOWNSEND. I was trying to find the testimony of Mr. Gompers and several other gentlemen who were before the Committee on Interstate Commerce of the Senate on the question of the regulation of railroads a month or two ago. I have not been able to locate that testimony, but I am going to quote from my memory, which I think is correct, on the subject. He insisted that the Canadian arbitration act was a failure; that it was approved by no one, as I recall it, neither the men nor the shippers, nor the people themselves; that it had not resulted in such benefits as were expected of it.

and, in fact, that the condition in Canada under that law was worse than the condition in the United States under the Newlands arbitration law. Your testimony on yesterday, as I recall it, was to the effect that the investigation that had been made there by the Government and others had pronounced that law a success. Am I correct as to your statement?

MR. KRUTTSCHNITT. You are. Mr. MacKenzie King, the ex-Canadian minister of labor, in an address made before a meeting which I attended, explained the workings of that law and pronounced it a most unqualified success. I had the pleasure afterwards of meeting Mr. King socially, and on account of my interest in the matter, I took the matter up again with him and discussed the workings of the law, and he again assured me that the law had been very successful in its workings. I stated in the memorandum that I had read by my secretary yesterday that I sent a representative to Ottawa perhaps two or three years ago to interview the minister of labor, Government officials, and railroad officials, and received the same assurance as to the success of the law that I got from Mr. King.

I embodied in my memorandum an examination made of the law by Sir George Askwith, chief industrial commissioner of the British Board of Trade, which was presented to both Houses of Parliament of Great Britain. He investigated the workings of that act, and I quoted about a page and a half from his report, which corroborated everything that the Canadian ministers of labor had said of it. That you will have before you, as it is in the proceedings.

I think we have to judge of the act by what it has accomplished, or, to use the old-time adage, "The proof of the pudding is in the eating"; and I give here in my memorandum a report of the United States Board of Mediation and Conciliation, dated November 1, 1916, which shows that from the passage of the Canadian disputes act in 1907 up to October 18, 1916, a total of 212 disputes were referred for adjustment under its provisions. The total number of boards of conciliation established under the act was 182, the remaining 30 disputes being settled without the establishment of boards. The number of disputes where a strike was not averted or ended was 21. The report states in approximately 90 per cent of the cases brought under the act, therefore, its provisions were effective, so far as actually preventing strikes was concerned.

It seems to me that if we can not stop 100 per cent of strikes we would be making a very good stagger if we could stop 90 per cent of them; and if that could be done under an act similar to the Canadian disputes act we might, by the wisdom acquired in administering this act, get sufficient information to reduce the remaining 10 per cent—perhaps get a little more off. I do not know that we could ever attain perfection and stop all strikes. It is a condition very much to be desired; but if we could stop 90 per cent it would be a splendid beginning.

Senator TOWNSEND. I have been, as is known, for years a very ardent supporter and believer in a compulsory investigation law. I did introduce several bills in the House and had them pending in the Senate and received a favorable report in the House and also in the Senate, but the statement that was made was that under the Newlands Act fewer strikes had occurred in the United States than occurred in Canada under that act for the same length of time; and

it was presented here as being opposed not only by the laborers, but by the people generally. I was surprised when I heard that testimony, because it had been contrary to my understanding of the situation.

Mr. KRUTTSCHNITT. I share your surprise. This statement—not mine, but of the United States Board of Mediation—that there were 21 strikes in nine years, or an average of a little over 2 a year, it seems to me is a very strong confirmation of the opinion that the act is helpful in preventing strikes.

Senator TOWNSEND. Can you speak for the railroad managers sufficiently to state whether they are in favor of a compulsory investigation law which would make public all of the incidents connected with a strike or a pending strike?

Mr. KRUTTSCHNITT. At the time I had the personal investigation made, by sending a representative to Canada, I prepared a brief report of his visit and the opinions he had gotten from Canadian railway officers and from the Canadian Government officers of the utility of the act, and I sent it around to 11 executives of the principal American railways, and they all approved it. To be very accurate, I think one said at the time that while he approved it he did not think the time was opportune to try to have such a law passed; but my recollection is quite clear that with that one single qualification the indorsements were all unqualified.

Senator TOWNSEND. Another thing that you have mentioned several times is the fact that legislation has hampered the operation of the railroads and thereby affected their credit. Do you believe that the interstate-commerce law, even with its amendments, as a whole, has been detrimental to the railroads of the country?

Mr. KRUTTSCHNITT. No; I do not.

Senator TOWNSEND. It has been highly beneficial, has it not?

Mr. KRUTTSCHNITT. I think so. It has substituted regulation for freedom of action in a great many directions, but I think there has been compensation and more than compensation by the elimination of abuses.

Senator TOWNSEND. And yet that law, as I recall it, when the bill was before Congress and when amendments had been proposed generally—the railroads appeared in opposition to it, did they not?

Mr. KRUTTSCHNITT. I think in the main you are right.

Mr. ADAMSON. Has not that been true of every amendment?

Senator TOWNSEND. I was just getting into that.

Mr. KRUTTSCHNITT. I think this is also true: That the railroads have learned their lesson, and have learned it quite thoroughly.

Senator TOWNSEND. I was wondering if they had. That is the point that interests me, because you gentlemen are certainly skilled in your business, and your reputation is such as to warrant confidence. But, having been on this committee throughout so many years, and met with opposition to things that seemed to us to be good, and which were subsequently demonstrated to be good, and admitted now by you and others as being good, I should like to know that we could have confidence in your judgment at this time on these subjects.

Mr. KRUTTSCHNITT. I will say that there are some few things that we would like to see altered. For instance, this stereotyped delay in the application for increase of a rate. That delay is nearly

always the maximum delay allowed to the commission by the law. We do not think for a moment that that is because of the indisposition of the commission to listen to our side of the case, but that it is due to the fact that they are overworked; that they have not the time, and that they are forced to procrastinate.

Senator TOWNSEND. I realize that; I think everybody does.

Mr. KRUTTSCHNITT. The principal reason we have come before you now is to ask to be relieved of a large number of masters; in other words, to be subjected to the regulation and control of one master instead of many. I think from what has been said here already to the committee that it must be evident to you that the multiplicity of views about regulation and interference in the management of railroad affairs is embarrassing, very embarrassing, and when these facts are known to the investing world it makes investment in railroad securities unattractive in comparison with other securities in companies the operations of which are not hampered by either close regulation or management.

Senator TOWNSEND. You have mentioned several times, as did also Judge Lovett, that the element of speculation must enter into the financing of railroad properties; there must be an opportunity for extraordinary earnings else capital would not invest. Now, to what speculation do you have reference? What speculative value could be found in legitimate railroading?

Mr. KRUTTSCHNITT. I would illustrate that in this way: A community wants a railroad. They get out a prospectus and figure that the earnings are going to be very, very large, very profitable. Most men, when brought face to face with that, would naturally ask the community, "If they are so very profitable, why don't you build a road?" There are always a great many excuses why they should not. I remember distinctly the case of a road in Oregon, the construction of which came under me at a time when I was serving the Union Pacific as well as the Southern. Communities in Oregon had been doing just what I said; they had been circulating prospectuses as to the fertility of the country to be served, the amount of tonnage to be expected, and painted the situation in the most rosy colors; and it was the practice whenever Mr. Harriman or I went up into Oregon, particularly to Portland, for these people to tackle us and urge construction of this road. We asked several times "Why don't you gentlemen build this road? It is a very small affair"—I think it was 150 or 160 miles—"If the profits are so great and the demands are so urgent for transportation facilities, this must be a splendid investment, and why do you neglect the opportunity of going into it?"

I never remember that they gave a very satisfactory answer, but at a dinner that they gave Mr. Harriman, at which I was present, when they urged him to build it, he finally said: "I make you this proposition—let us go into this road as partners. I will go into it with you. I will furnish half the money, you to furnish the other half. Now, it is a fine investment, according to you, and you ought to have no trouble getting a very high return on your money." As I remember there was dead silence. There was no answer to Mr. Harriman's proposition.

The situation remained so acute and was the cause of so much irritation that Mr. Harriman at last yielded and did build the road.

which was completed about 1911 or 1912, before the unmerger of the Union Pacific and the Southern Pacific systems. About a year ago a man who has been associated with us in former years in building branch roads conceived the idea of building some roads in the same territory, and asked me, as a friend, for advice; and to write him a proper letter of advice I went to my former Union Pacific associates and asked them if they would mind telling me what had been the returns on this road that Mr. Harriman had been almost compelled to build. They told me they had no objections whatever, and they showed that the road had just about paid its operating expenses—a little more—and all the money invested in it was a dead investment—was producing nothing, and that was about the early part of 1916. The road was finished, I should say, in 1911 or 1912, and after four years was barely paying operating expenses.

Senator TOWNSEND. What would have been the loss to the country if that road had not been built?

Mr. KRUTTSCHNITT. I do not think there would have been any. Of course it is a convenience to the people there, but they can not possibly produce enough tonnage to support the road.

Senator TOWNSEND. Your speculative value that you have illustrated there was in reference to a new road. Of what value is the speculative interest—before I get to that question: What right have intelligent people anywhere to believe that there could be an exorbitant return on the proper operation of a railroad, under the regulations prescribed for interstate commerce, which prescribe only just and reasonable rates?

Mr. KRUTTSCHNITT. I had hardly finished my answer. I had started by stating that communities wanted these roads built, and were unwilling to put their own money in these enterprises, but were quite willing that others should put their money in on the speculation that they might get returns that would justify the risk. I want to state, out of respect to Mr. Harriman's business acumen, that I do not think he ever built this road with the idea of every getting very large returns, but he built it because the public he was serving in a great many other directions practically insisted that he should.

Senator TOWNSEND. You are not asking for any special legislation that would help such a proposition as that, are you?

Mr. KRUTTSCHNITT. I would not ask any except as has been pointed out before that we should get reasonable rates. If the road can not live under them, I suppose we should have to charge it up to bad judgment or excessive good nature.

Senator TOWNSEND. Now, I say, your example has referred to the financing of a new proposition. How does the speculative value enter into the operation or management of roads already in existence?

Mr. KRUTTSCHNITT. This speculative element entered into the construction of those roads from the beginning. If the parties who put their money in are restricted, we will say, to 4 per cent or  $4\frac{1}{2}$  or even 5 per cent returns on a project, the future of which is uncertain, they would be very foolish to put their money into such a concern, because they can find investments elsewhere the returns on which are certain and on which they can get that much or more.

Senator TOWNSEND. Now, you are referring to newly constructed roads?

Mr. KRUTTSCHNITT. I can not refer back, or I can not very well suppose a road now in operation where that speculative element did not enter into its construction.

Senator TOWNSEND. Well, now, what proportion of the roads of this country are owned to-day by the men who built them, who put their money into them with the proposition they were going to get a speculative value out of them?

Mr. KRUTTSCHNITT. Oh, I can not say.

Senator TOWNSEND. A very small proportion of the railroads, is it not?

Mr. KRUTTSCHNITT. I would say that I believe that a great many—perhaps most, as you put it—of the men who promoted these roads are no longer in them. .

Senator TOWNSEND. Well, then, I am at a loss to understand the application of the argument that we must encourage a speculative element in order to have the roads properly operated.

Mr. KRUTTSCHNITT. If the people who have their money now in these roads, who now own them, have no certain or guaranteed return—that is, if they are not lured on by the spirit of speculation and hope of getting a larger return in the future to make up for what they consider unsatisfactory returns, now or in the past—they will take their money out of those projects and put it into others that offer more certain and more attractive returns, and you will get no people who will invest in the securities of the roads under the conditions that put a very low maximum on the returns and let the minimum take care of itself.

Senator TOWNSEND. I am in hearty sympathy with the proposition that there should be stability, and that there should be reasonable certainty, as nearly as can be, in reference to railroad operation; but I still must beg your pardon if I fail to see how you have demonstrated, or anyone else has demonstrated, as a statement of fact, that speculation is necessary in order to operate railroads. What right has any man of intelligence to expect a speculative profit out of railroad operation with the laws of our country as they are to-day and these questions having been determined so often by the Supreme Court of the United States?

Mr. THOM. May I interrupt a moment, Senator, to say a word there?

Senator TOWNSEND. Certainly.

Mr. THOM. I made an argument on this subject, and I heard Judge Lovett's remarks on the subject, and my understanding of his position and my assurance as to my own in respect to this matter, was that we recognized that under regulation the speculative element is withdrawn, and therefore in order to get the new capital necessary to keep these utilities up to the point of adequate usefulness you must now appeal not to the speculative element but to those investors who require assurance as to stability and as to certainty, and consequently eliminating the speculative element and eliminating the other sources of credit we come down to the problem before the American Congress and the country as to how now we are to get the necessary money out of the only class of investors which is left, and that is the class which must be attracted by stability and certainty.

Senator TOWNSEND. I understand that position very fully, but that has not been the position that has been taken.

**Mr. ADAMSON.** My recollection, Senator Townsend, of Mr. Thom's argument was that he was emphasizing the fact that formerly speculative instinct led men to go into these railroads, but under strict regulation that has been eliminated.

**Senator TOWNSEND.** I was not a member of the committee and present when Mr. Thom was testifying, and while he told me he was going to send me his testimony, I have not yet received it. I simply listened to the testimony of Judge Lovett and of the present witness.

**Mr. THOM.** Judge Lovett's position, unmistakably, Senator, if you will read what he said, accords with what I said.

**Mr. HAMILTON.** I understood the railroads' position to be, so far, that there was no longer room for adventure; that the time for adventure had passed.

**Mr. THOM.** That is it.

**Senator TOWNSEND.** Another thing that you stated the other day, or a complaint that you made, was that under existing regulation by the States generally, and possibly by the Interstate Commerce Commission, the claims for shippers, or rather proposed increases in rates for railroads, should go into effect at once instead of waiting for some time for determination by the Interstate Commerce Commission, during which time the proposed rate is suspended. You figure that it would be better, as I understand, to have that go into effect at once, and yet I can not understand how, if that proposed rate should be declared illegal, how the shippers would be able to get any redress at all. Some of them would, I can readily see that, but the great majority of them, whose goods and products had been mingled with others and who had sold their stuff to the local dealer, possibly, and the freight rate had entered into the proposition—how are those people going to get any redress if they should be made immediately operative and then afterwards found illegal?

**Mr. KRUTTSCHNITT.** The freight rate, as I pointed out yesterday, in a majority of articles of commerce is an extremely small percentage of its cost. It should not affect the price of commodities to the consumer to any extent. Of course, if the middleman has bought goods and has largely increased their prices and sold them to the ultimate consumer, it would perhaps be difficult for the ultimate consumer to get back the increases from him, but the amount of those sales must be small, and if the rate went into effect at once and the commission ordered a restitution, it devolves upon the railroads to keep account of the freights paid and to return them to the people who paid them. On the other hand, if the suspensions continue to be made as they are now, the carrier has no redress if the commission finds the rates justifiable and reasonable. The carrier in the interim of the suspension has lost, without any hope of ever getting back, the difference between the rate finally fixed by the commission and the one appealed from.

**Senator TOWNSEND.** I see that. I understood that when the law was passed, and I could see where possibly there would be an injustice done, but let us take the example, for instance, of the farmer who sells his wheat to the local elevator man. The elevator man pays him, as I think he will admit, less by the amount of the additional freight, for the wheat. How is the farmer going to get his freight back if the rate is declared an improper one by the commission?

Mr. KRUTTSCHNITT. Well, that is a matter that I expect you gentlemen charged with seeing justice done between the shareholder of a railroad, who, on the one hand, would be deprived of the earnings to which he would be entitled under a proper rate, and the former who might pay a little more under the suggested conditions—that somewhere it would become your duty to cast a balance between those two, and to prescribe a law that would recognize the rights of both sides.

Senator TOWNSEND. If that could be done——

Mr. KRUTTSCHNITT. There are a great many shareholders who own the railroads of this country. They are no longer owned by a few men, as was the case perhaps 15, 20, or 25 years ago, but they are owned by a vast number of people, spread over the country. Our company, which not many years ago was really owned by four men, is now owned by over 34,000 people.

Senator TOWNSEND. I understand that.

Mr. HAMILTON. May I ask, at this point, how long ago it was when you said your railroad was practically owned by four men?

Mr. KRUTTSCHNITT. Well, Mr. Huntington died in 1899.

Mr. HAMILTON. I was only trying to get at the period covering this rapid spread of ownership.

Mr. KRUTTSCHNITT. He died in 1899. Up to that time the road had been practically owned by four people.

Mr. HAMILTON. Then this wonderful rapidity of growth of ownership has gone on in approximately the last 16 years?

Mr. KRUTTSCHNITT. Practically; yes, sir.

Senator TOWNSEND. The theory, as I understand it, of the law-makers was that the railroads proposed an increase of rates; rates that had been in existence probably many years, and the proposition was that before those rates were changed there should be an opportunity given to determine whether or not they were just and reasonable, and leave the matter in statu quo—as it had been—until that determination. It was not placing any additional burden on the railroads, but simply giving them an opportunity to make good the claim that the rates should be increased. That was the theory, as I understand it.

Mr. KRUTTSCHNITT. It was not imposing any additional burden, but it was not giving the railroads relief from burdens which had become intolerable under changed conditions.

Senator TOWNSEND. Now, I do not want to occupy very much of your time. I was interested—greatly interested—in the statement you made the other day to the effect that labor employed by the railroads was becoming less efficient, and was now less efficient under the laws which have been passed, ostensibly and openly, for the benefit of labor—that it had resulted in less efficiency.

Mr. KRUTTSCHNITT. I will try to point that out somewhat in detail. I thought a great many of the reasons that I read yesterday were almost self-explanatory. Let us take what is known popularly as the full-crew law. A certain number of men have been operating trains successfully and safely, and, I will say, efficiently. Suddenly the claim is made that it is unsafe to operate trains with that number of men, and they should have one more man, and a great many States have said, "All right, we will put on the one more man." That is making for efficiency. We are paying one man for doing work

that could be done by those who were on the trains before. We are paying four, for instance, in place of three.

Take the law limiting the length of trains, in favor of which a very active campaign is being waged at the present time. I pointed out yesterday that in a period, I think, from 1895 to 1915, that although the cost of running a train-mile on the railroads had increased very largely—93 per cent—the roads by increasing the efficiency of operation have maintained their net constant. It was 3.6 mills 20 years ago and it is 3.5 mills to-day. It is substantially the same. The roads have been able to do that by vast expenditures of capital. They have reduced grades so as to make their locomotives of the same power haul more freight, which they can do on a low-grade line as against a high-grade line. They have straightened their lines. A locomotive can haul more freight on a straight line than it can around or over a very crooked line or a line cut up or made up of a great many curves.

Now, that efficiency that the roads have obtained by expenditure of vast sums of money, not only in altering the physical condition of the roads, as I have pointed out, but by buying more efficient locomotives and cars, has been taken away in some States from the roads by the inefficiency of labor. Labor says, "We will not haul these long trains, and if you do not stop making them up we will go to the legislature and have them order you to stop." They have succeeded in one or more States, and I have told you that the measure is pending in a large number of others.

Take the very contracts that have been given a great deal of publicity—I do not think enough, but a great deal—in this contention that was made last August under the threat of a strike. The railroads must pay a certain number of dollars for a day's work whether it be 10 hours or 8 hours, or they must pay money for a certain number of miles per run. If the miles run are 100 and the speed be 12½ miles an hour, it figures out eight hours work. Twelve miles and a half is a moderate speed, but a great many freight trains, such as stock, dressed beef, and perishable freight, are run at speeds from 18 to 25 miles an hour. If the speed is 25 miles an hour and the run is made in four hours, we are required or labor demands that we shall pay the same for the four hours as for the eight. There is a fall in efficiency. Take the—

Mr. ADAMSON. How is it a failure in efficiency when he does the same thing—

Mr. KRUTTSCHNITT. I beg your pardon.

Mr. ADAMSON. If it does the same thing in four hours as in eight hours, how do you drop in efficiency?

Mr. KRUTTSCHNITT. Because we are paying for eight hours' work and should receive it.

Mr. ADAMSON. No; you are paying for running 100 miles; that is the basis on which that eight-hour bill passed, and I do not think you will ever get any consideration for increased rates on account of that law until you put that law in force. Allow them to run 12 miles an hour and see if they can not get out the same amount of work in eight hours.

Mr. KRUTTSCHNITT. Mr. Chairman, you seem to consider that as entirely an academic question, to be proven by trial.

Mr. ADAMSON. On the contrary, I believe it is a practical question. I have not only watched both sides of the question, but I have watched trains for 40 years, going from a pull of 900 tons from Macon 30 years ago to a pull of 2,700 tons now at \$5.25 a day, and the Georgia Legislature has tried two or three times to pass a law that you shall not run a train over a mile long; and it will not surprise me, if you all do not quit exaggerating Mr. Hill's idea of loading trains to the capacity, that Congress will eventually limit your tonnage and the length of your trains.

Mr. KRUTTSCHNITT. Mr. Hill has, perhaps on account of his prominence in the railroad world, attached his name to the running of long trains. It is a fact, however, that whether advocated by Mr. Hill or anybody else, as I tried to point out yesterday and again this morning in answer to Senator Townsend's questions, the only way the railroads could live was by increasing the hauling power of their locomotives, either by reducing the grades, straightening their lines, or buying heavier locomotives. I do not know whether your observations as to the length of trains in Georgia have extended to the character of the locomotives pulling the trains.

Mr. ADAMSON. Yes, sir.

Mr. KRUTTSCHNITT. They were probably heavier locomotives.

Mr. ADAMSON. Yes; I would rather see one heavier than a double-header, I think.

Mr. KRUTTSCHNITT. But if the time should come, as suggested by you, when Congress will step in and absolutely prohibit the roads from using the only life-saving methods left to them, that day will mark, I believe, the beginning of Government ownership.

Mr. ADAMSON. I think, on the contrary, Congress will do that in advocacy of life-saving methods. They admire the system, whether properly named from Mr. Hill or somebody else, of loading of vehicles to proper capacity, making the train of mobile length and weight, but I think the consensus of opinion of all is that you are overloading them entirely, and for that reason you make overtime unnecessary on your roads, but that is more than balanced by your accidents and losses connected with that.

Mr. HAMILTON. May I ask a question there of Mr. Adamson? Would it not react upon the railroads if they overloaded their trains?

Mr. ADAMSON. It does do it.

Mr. HAMILTON. Or overextended their trains? Now, if that is true, the railroads, being managed by men of ability, would they not recognize that, and would not there be a natural limitation in the operation of the traffic?

Mr. ADAMSON. Well, they send out one long train and three or four drawheads pull out from the weight on the front cars, and the engineer and the conductor and one brakeman tug at it with a big chain and lose time, and it takes 16 hours to make an 8-hour run; therefore it looks to me like the losses and overtime more than balance the losses on that train.

Mr. HAMILTON. But would not a few such instances as that—

Mr. ADAMSON. Yet hope springs eternal in the human breast, and these gentlemen are confident that they know more about it than anybody else, and they think the next time it will not break; that they will run it through all right.

Mr. HAMILTON. That would be very experimental railroading, I think.

Mr. ADAMSON. That is where the speculation comes in.

Mr. KRUTTSCHNITT. I should like to answer the question implied in the chairman's remarks, if I may.

Mr. ADAMSON. I should be glad if you would. If I am wrong, I want to know it. I have been looking after it mighty hard.

Mr. KRUTTSCHNITT. I want to give an illustration that is not speculative. I will begin by saying, of course, as Mr. Hamilton has properly remarked, if the railroads of the country continue going on doing what the chairman has outlined, their officers would be monumental asses, absolutely unfit for their positions; and I do not think the shareholders would allow them to remain there very long.

Mr. ADAMSON. Congress could direct them, though, without calling them those names.

Mr. KRUTTSCHNITT. That is not a very bad name. Now for the illustration.

When I was located in San Francisco as general manager of our company's properties I started a practice of getting efficient work out of the locomotives. We certainly before that time had not been getting it. I attached to my office as an assistant a very intelligent man and instructed him to act with the engineer of maintenance of way, who was familiar with the grades and curves, and with the superintendent of motive power, who was familiar with the capacity of locomotives, in devising a table of locomotive loads for each and every division. And I said to them, "I do not want locomotives overloaded," because I appreciated just what Mr. Hamilton did. I said, "I do not want the traffic delayed by trains unable to make the time simply in the vain effort to get a few more tons, but I want the locomotives rated at a reasonable rating; give them what they can pull comfortably and no more."

Well, as we expected, there was more or less opposition to this, but the opposition was most pronounced on one particular division, where the reports came in every morning, "Locomotive overloaded; could not make time." I got impatient and tired of these reports, and at the end of a week or 10 days I instructed this assistant to get out on that division and live on it until he ascertained what the causes of the delays were. We knew thoroughly well that the cause was not overloading of the locomotives, because the power of a locomotive to haul a load on a given grade or any given system of grades is as easily computable as the interest on a promissory note. There is no doubt about it. Well, he went out on the road, and within two days after he had been there the delays were lessened. At the end of a week the locomotives were pulling with perfect comfort and making time over the division the loads that were assigned to them, and when he came back I asked him, "What was the trouble?" "Well," he said, "most of the trouble was loafing on the sidetracks, getting in a sidetrack and not taking any particular interest when they got out." He said, "In no single instance did I ride a locomotive in which the engineer claimed he could not comfortably pull the assigned load." That ended the trouble, and we have never had any trouble on that division in pulling the assigned loads, and have

not had any on others. We have had drawheads pulled out; that was due to other causes. There are ways in which the train is handled; it may be started in such a way as to insure pulling out of the drawhead. It may be handled over undulating grades in such a way as to guarantee pulling out the drawheads. In other ways the trains can be hauled over the same undulating grades and pull the same loads with almost absolute immunity from pulling out drawheads. So it is not the loading of trains that does this.

Possibly on some roads, possibly on the roads you have watched, Mr. Chairman, there has been injudicious loading and bad judgment shown; but I do claim as to the roads of the country generally that the men in charge of the management have reasonable ability and are not doing things that would simply obstruct traffic on the road in the vain endeavor to haul a few more tons than they should.

Now, we will see what happens from increasing speed. You take a typical freight locomotive. To make a speed over the ground of 10 miles an hour we have always assumed, and the assumption is very close to correct, that the locomotive has to run about 50 per cent faster than the schedule; in other words, she has to make 15 miles an hour running. Now, the capacity of a locomotive at that speed, a typical freight locomotive, is 33,300 pounds of traction. If you increase the speed to 12½ miles an hour and add 50 per cent, as we did, the traction falls to 28,883 pounds, or 13 per cent. Now, if we examine the freight train-miles that are made on the railroads of the United States in 1914, the last complete statement that we have of locomotive miles, there were 638,500,000 made with the average trainload of 452 tons. If that trainload is cut 13 per cent on account of the loss in tractive power of the locomotive at the higher speed, it would require 735,000,000 train-miles, or an increase of 96,500,000 train-miles, to handle the same traffic.

Mr. ADAMSON. The trouble is, though, you make a hodgepodge out of all of them, while there may be 75 per cent of those trains not overloaded, while the other 25 per cent are, and it would not be fair to cut those that are not overloaded now. You cut all of them horizontally, according to your figures.

Mr. KRUTTSCHNITT. The hodgepodge was introduced by the Interstate Commerce Commission in sizing up the trains and the average load of the entire United States. I followed their example only. If the hodgepodge is unjust in one case, it is unjust to the same extent in the other; and the comparison of the two conditions, or their relative conditions, are not affected.

Mr. ADAMSON. But it is evidently unfair, though, to say that those trains that are not overloaded should be cut also because you are correcting errors in those that are heavier loaded.

Mr. KRUTTSCHNITT. You have to have a unit of measure, and the unit of measure of train loading and the number of train-miles run is derived from taking, as you have called it, a hodgepodge of everything run and reduce it to an average.

Mr. ADAMSON. But talking about averages does not mean that when you undertake a correction you have got to correct all horizontally, but only those that need it.

Mr. KRUTTSCHNITT. Yet the effect of correcting those that need it is the same in one set of figures as the other. That is what I want

to insist on, and if there is any inaccuracy the inaccuracy enters into both computations, affects them alike, and therefore a comparison is just of the two methods. Incidentally in running at more train-miles you make 28 per cent more stops, meeting points of trains, and sources of delay.

Mr. ADAMSON. Then, the slower you go and the fewer meeting points you have the faster you will go on the entire journey?

Mr. KRUTTSCHNITT. No; I do not say that.

Mr. ADAMSON. Would that not result from the argument?

Mr. KRUTTSCHNITT. No.

Mr. ADAMSON. I am much obliged to you. I am glad to know that on your system of roads you do not overload the trains and the engines.

Mr. KRUTTSCHNITT. I, of course, can speak with more authority for our system of roads.

Mr. ADAMSON. I do not doubt that you act wisely, from my knowledge of you.

Mr. KRUTTSCHNITT. But I know, Mr. Chairman, that while there may be exceptions—and I do not question at all what you stated about the trains that have come under your observation, but I am speaking now with the greatest authority about Southern Pacific operations, and with the authority derived from the information given by the Interstate Commerce Commission of the operations of all of the roads of the country grouped.

Mr. ADAMSON. Mr. Kruttschnitt, you know it is an unfortunate fact in civilization that you have to legislate for the correction of the few evils that you find; that very often it is those not doing wrong who complain. If the majority of the citizens committed crimes, it would be a horrible state of affairs; but we have to legislate with a view to those that do wrong in order to correct that. It is for the protection of the good ones, not for their correction.

Mr. KRUTTSCHNITT. That is quite true, Mr. Chairman; you do punish a few for the good of the many; but in this case you are punishing the many to reform the few.

Mr. ADAMSON. While it is not desired to punish any innocent ones, sometimes inconvenience is visited on people who are not really guilty in order to catch the guilty ones.

Mr. KRUTTSCHNITT. I want to impress on you as earnestly as I can that your suggestion that it might lead to legislation on the part of the Congress to control absolutely the tonnage hauled by locomotives would mean robbing the railroads of substantially the only effective means they have now of making both ends meet.

Mr. ADAMSON. Now, Mr. Kruttschnitt, you say to make regulations to prevent certain practices would be robbery. Before the 16-hour law the evidence was before our committee that men had to run 24, 30, and one said he had to run 40, hours without rest. When we passed the 16-hour law, requiring you not to let any man work longer than that, it kept you from working them overtime; it changed that practice. I do not say you—I mean some of the railroads. Would you call that robbing the railroads because they were required to stop that practice?

Mr. KRUTTSCHNITT. No; not at all.

Mr. ADAMSON. Is it proper to say that you are robbing the railroads if, for the safety of travelers and the good of society, we say

you shall not do a thing because the thing is wrong and dangerous, although you make more money by continuing it?

Mr. KRUTTSCHNITT. No; I should say, if you found an abuse of the kind that you describe to exist, the proper remedy would not be to say to the railroads, "We prohibit you from doing that which you have done before in order to make your service more efficient and in order to live under the rates that you receive, but we forbid you from working men more than a maximum number of hours." You have done that already; that is the 16-hour law.

I want to say here that I approve most heartily what was done in that case, and I want to say now, without any disposition to brag, that I passed a 16-hour law myself 10 or 12 years before Congress did, and I threatened, if necessary, that I would discharge any superintendent who kept a man on the road over a certain number of hours.

Mr. ADAMSON. What you meant to say now in substance was, if Congress should pass any such law that you thought drastic and unnecessary you would differ in judgment from Congress?

Mr. KRUTTSCHNITT. I say, Congress ought to consider, in passing a law, whether it is possible for railroads to live under it.

Mr. ADAMSON. You would not say Congress is robbing the railroads?

Mr. KRUTTSCHNITT. Mr. Chairman, you selected that word of sinister sound.

Mr. ADAMSON. No, sir; I beg your pardon; you said if we ever did that we would be robbing the railroads of their rights.

Mr. HAMILTON. He did not say rights.

Mr. ADAMSON. Profits.

Mr. KRUTTSCHNITT. There are two meanings to the word "rob," one to hold a man up at the point of a pistol and take what he has got, and the other meaning, the less sinister one—and I used the word "rob" in that sense if I did use it—the other meaning is that it would deprive him—

Mr. ADAMSON. Then you should say "deprive."

Mr. KRUTTSCHNITT. I will say "deprive" hereafter.

Mr. HAMILTON. Senator Townsend, bearing directly upon what Judge Adamson asked, may I inquire of the witness?

Senator TOWNSEND. Yes; I shall be very glad to have you.

Mr. HAMILTON. I want to ask just one question. Is not the lowering of grades and the straightening of curves on a railroad analogous to the making of good highways, in this, that the good highway permits the farmer to haul at one load what he otherwise might have to haul at two loads; and is it not the very purpose of the lowering of the grade and the straightening of the curve to enable the railroad company to haul a greater load; and does that not in the end, under the control of the Interstate Commerce Commission, inure to the benefit of the patron of the road in lowered freight rates, should it not do so?

Mr. ADAMSON. Before you answer that I should love to ask Mr. Hamilton, What would you think of a farmer who would string a row of wagons along one after the other—make a string of wagons around a block?

Mr. HAMILTON. I say your trainload is analogous to your wagon-load. I am asking the witness; he is an expert. I ask you for your judgment on the question.

Mr. KRUTTSCHNITT. I think you are entirely right in your conception of the trainload. I have said before, and I will repeat, that the only way in which the railroads have been able to keep going, to live under the constant fall in rates and in face of the constant demands made on them by labor for increased wages—both have been constant in their trend, a constant trend upward in wages as I showed you on the chart yesterday, and a constant trend upward of the prices of materials; and a mere child could see that the railroads long ago all would have been bankrupt if they had not adopted something that would counteract those tendencies, and that something was increasing the capacity of their roads to handle freight by reductions in grades and elimination of curves, and by buying more efficient locomotives; in other words, by hauling greater loads.

Mr. ADAMSON. Suppose a railroad was straight as a die and level as a plain, could there ever be any limit in the judgment of railroad men according to the ideas of some to the length of trains and weight of loads?

Mr. KRUTTSCHNITT. Absolutely, Mr. Chairman. There is an element that comes in there that takes care of the trainload.

Mr. ADAMSON. Where would the limit be?

Mr. KRUTTSCHNITT. I am going to try to tell you.. The upper limit would be no trainload. You put on a perfectly straight, perfectly level track and speed up your locomotive to a point where she could haul herself only, could not haul anything behind her. The other limit is if you load her so that she could move at such a slow rate of speed as practically to block her progress. Now, the wise point is to gauge her load to a speed that is considered practicable and the most economical, and having fixed that limit for a trainload, just see that she makes it.

Mr. ADAMSON. And you say there is no room for difference of judgment as to where those points should be?

Mr. KRUTTSCHNITT. I say there is no room for difference of the computations and fixing the capacity of the locomotives. That is fixed by mechanical laws that are inflexible. There may be a variance of judgment in different men's minds as to whether the economic speed is 12, 15, or 20 miles an hour. It varies with traffic and with what the railroad has to do.

Mr. HAMILTON. In one instance you save speed without traction and in the other you strike an average between speed and traction?

Mr. KRUTTSCHNITT. Yes. In other words, the traction decreases so largely with the speed, because of the fact that every time the wheels are turned around the cylinders have to be filled and emptied of steam, and you very soon, at very high speeds, get to the capacity of the boiler; it can not possibly steam fast enough to fill the cylinders.

Mr. HAMILTON. It is like the description that Lincoln gave of the steamboat on the Mississippi River; it had such a big whistle that every time the whistle blew the boat had to stop.

Mr. ADAMSON. Ultimately Mr. Hamilton's argument would lead to a train so long that the front end would arrive before the back end started.

Mr. HAMILTON. Well, if it was a crooked road.

Mr. KRUTTSCHNITT. That might happen if a bad stop was made and a drawhead pulled out.

Mr. ADAMSON. That does happen often now.

Senator TOWNSEND. Would you wish to give any other cases of the inefficiency?

Mr. KRUTTSCHNITT. I just wanted to give a few more. It is generally on the same lines; you might put it under the general head of limitation of output. Those I have given already are limitations of output. Take the limitation of the output of the bricklayer. The bricklayer is not allowed to lay more than a certain number of bricks a day. Mechanics in other lines have their daily output fixed by their organizations, and dare not exceed them.

I was in a meeting, not over two months ago, of manufacturers, a kind of an experience meeting, and a number of New England manufacturers were there, who gave instances of where certain devices were made under the ordinary shop rules at the rate of 30 or 36 a day on certain machines, and where they put men to work that were not under organization rules in other factories the output went up to as much as several hundred per day of the same devices on the same machines. You find it every day.

Senator TOWNSEND. Were they working the same hours in both cases?

Mr. KRUTTSCHNITT. Yes. That seems to be a well-nigh universally imposed law with all the organizations, to limit the output.

Senator TOWNSEND. I am in hearty sympathy, I desire to state, to render railroads more efficient. I think it is unpopular to some extent, but I think that is the duty of the common carrier and the public, provided it does not put unnecessary and improper burdens upon the employee, because the public is interested also in it; but the primary object of legislation in my judgment is service to the people, and if you have your trains long and it is necessary for efficiency, and that does not interfere with the life and health of the employees, why, I confess I believe in it.

But now you have answered part of this question in the suggestion of the bricklayers and other organizations. Your men are organized, are they—your men on your road?

Mr. KRUTTSCHNITT. Yes; pretty thoroughly, except as to some of the shop crafts, who struck some years ago and the organizations quit the roads, and I do not know to what extent the new men have been organized or not, but I do not think they are.

Senator TOWNSEND. When you deal with your men do you deal with them as organizations or individually?

Mr. KRUTTSCHNITT. We have always dealt with them in the way they wished, which was as organizations.

Senator TOWNSEND. Is your discipline as effective where the men are contracting with you individually as it is where you deal with them as an organization?

Mr. KRUTTSCHNITT. Yes; quite so. After the men have been broken in and understand their duties thoroughly they are more efficient. There are not as many objections to doing this, that, and the other; that increases efficiency.

Senator TOWNSEND. What can you say as to the general condition of labor, whether it has improved the conditions of living, and so on,

of laboring people who have been under your employ under organizations, compared with under the individual-contract system?

Mr. KRUTTSCHNITT. I can only speak with the knowledge of a citizen generally as to the conditions of labor. I do not know that we have ever made investigations following the individual worker to his home to see how he lived in comparison with the organized worker. We make no difference in the rates of pay; they are all paid the same, the organized and the unorganized; there is no discrimination. I would say generally, what is universally known, that the conditions of labor as to living conditions, conditions of food, clothing, and comfort generally have increased immeasurably. There is no doubt whatever that organization has had a large part—perhaps the largest part—to play in those improvements. I have never objected—on the contrary, I have heartily approved of all of the aims of organization when they did not go beyond improving the conditions of the laborer, either as to living conditions, labor, or hours. But what I have objected to, and what nearly every employer of labor objects to, is the assumption of the rôle of managers by the committees of laborers.

Senator TOWNSEND. I think I have nothing further to ask, Mr. Chairman.

Mr. ADAMSON. Judge Sims, will you take the witness?

Mr. SIMS. Mr. Kruttschnitt, what did you state was your present official position concerning railroad operation? You stated at the beginning, but I just do not remember.

Mr. KRUTTSCHNITT. I am chairman of the executive committee of the board of directors of the Southern Pacific Co. The executive committee is vested with all of the powers of the board when the board is not in session.

Mr. SIMS. The board of directors, you mean?

Mr. KRUTTSCHNITT. Yes; the board of directors.

Mr. SIMS. Yours is an organization superior to, or supplementary to, the board of directors?

Mr. KRUTTSCHNITT. It is part of the board. The board deputizes its full powers to six of its members, to be exercised when the board itself is not in session. When the board is in session its authority, of course, is supreme. When it is not in session the power of the executive committee of the board is supreme. It is simply a committee of the board.

Mr. SIMS. Now, whatever the executive committee does in the absence of the board, is it subject to review, repeal, or modification?

Mr. KRUTTSCHNITT. Oh, yes; the committee has to report every month to the board what it does. Our committee meets weekly, the board meets monthly, and every month the acts of the executive committee are reviewed by the full board.

Mr. SIMS. And either approved, modified, or vacated?

Mr. KRUTTSCHNITT. Yes; they take such action—the board takes such action as they deem fit.

Mr. SIMS. What office or position did you occupy when you were connected—

Mr. ADAMSON. My attention has been called to the fact that we agreed on each subsequent examination that we would change the order for examination and begin with the junior members instead of with the senior members. Accidentally, that happened with Senator

Townsend, but unless Mr. Hamilton waives I will ask you to let him go ahead, Judge Sims.

Mr. ESCH. We might as well go on now and revert to the rule afterwards.

Mr. SIMS. I do not object.

Mr. HAMILTON. I yield, Mr. Chairman, very gladly, to Mr. Sims.

Mr. ADAMSON. Judge, will you suspend a minute?

Mr. SIMS. Certainly.

Mr. ADAMSON. My attention is called to the fact that we agreed when we came to the examination of witnesses that we would change the order of examination and begin with the junior member instead of the senior member. Accidentally that happened with Senator Townsend, but unless Mr. Hamilton waives his turn I will ask you to let him go ahead, Judge Sims.

Mr. ESCH. Mr. Chairman, I think we might as well go ahead in this way as long as we have started and change the rule in the future.

Mr. SIMS. I do not care. It is immaterial to me.

Mr. ADAMSON. Well, of course, we can do anything by unanimous consent.

Mr. HAMILTON. I yield very gladly. I thank the chairman, however, for the suggestion.

Mr. SIMS. It is perfectly satisfactory to me any way you gentlemen care to have it.

Mr. ADAMSON. Well, just proceed.

Mr. SIMS. Before you held the position you now hold, what official relation did you have with the Southern Pacific Railway Co.?

Mr. KRUTTSCHNITT. Before my present position?

Mr. SIMS. Yes.

Mr. KRUTTSCHNITT. I was, you might call it, operating vice president and director of maintenance and operation. I had full charge of the maintenance of the property, of construction, and operation.

Mr. SIMS. How long have you been engaged in railway employments or service?

Mr. KRUTTSCHNITT. Since 1878.

Mr. SIMS. How long have you been connected with the Southern Pacific?

Mr. KRUTTSCHNITT. The whole time, from 1878.

Mr. SIMS. You began your railroad service with the Southern Pacific?

Mr. KRUTTSCHNITT. Well, it was not the Southern Pacific then. It became the Southern Pacific in 1885. I was with the Louisiana and the present Southern Pacific.

Mr. SIMS. You have had every opportunity, then, to know the conditions of operation, service, credit, and everything else connected with the Southern Pacific ever since it became the Southern Pacific?

Mr. KRUTTSCHNITT. I had nothing to do with the credit of the company until I became—

Mr. SIMS. You had an opportunity to know. That is all I asked.

Mr. KRUTTSCHNITT. Yes; in a general way.

Mr. SIMS. Do you know the miles of railroad operated at the present time by the Southern Pacific—the mileage? I think you stated it. I do not know whether you did or not, though.

Mr. KRUTTSCHNITT. We have in actual miles of road about 11,300. Then we have half ownership, I should say roughly, of six or seven hundred miles more, which would raise it to about 12,000, and then the additional tracks, second tracks, third tracks, and fourth tracks, yard and side tracks, which would add largely to that—probably five or six thousand miles.

Mr. SIMS. That half ownership—is that the part referred to by Judge Lovett as owned half by ex-Senator Clark and the other—

Mr. KRUTTSCHNITT. No; that is the Union Pacific and Clark interests. The half interest is in certain lines north of San Francisco Bay, running up to Humboldt, and in lines—

Mr. SIMS. I do not care to have you mention them in detail. I only wanted to know if that was the same one referred to by Mr. Lovett?

Mr. KRUTTSCHNITT. No.

Mr. SIMS. Is not the Southern Pacific a good solvent railroad company?

Mr. KRUTTSCHNITT. I certainly think so.

Mr. SIMS. Enjoying good credit?

Mr. KRUTTSCHNITT. I certainly think so.

Mr. SIMS. It markets its bonds and securities perhaps at as good a rate as perhaps any other railroad company in the United States, does it not?

Mr. KRUTTSCHNITT. I would not say that. There are roads which can market at a less price than we can. We are fairly high up on the list, but there are others, for what reasons I do not know, that can market their securities at a better rate than we can.

Mr. SIMS. Your railroad company has no trouble about getting all the money it needs at this time?

Mr. KRUTTSCHNITT. No; but as I said the other day—I gave a list of the security sales here. We pay an average of  $5\frac{1}{2}$  per cent for money, but during the same years New York City paid  $4\frac{1}{2}$  per cent. In other words, we were paying about 1 per cent more.

Mr. SIMS. Your statement was, as I remember, the Southern Pacific pays 30 per cent more for money than does the State of New York.

Mr. KRUTTSCHNITT. Yes.

Mr. SIMS. Those were your words in your direct statement?

Mr. KRUTTSCHNITT. Yes.

Mr. SIMS. I was trying to find out whether or not the Southern Pacific was commercially low in credit or is it a road that is not entitled to credit—

Mr. KRUTTSCHNITT. I say it is a road that is entitled to credit, although I qualified it by saying that there are some roads that get money, I know, cheaper than we do.

Mr. SIMS. The credit of your road and the conditions warranting credit are above the average of the railroads, taking all the railroads in the United States, is it not?

Mr. KRUTTSCHNITT. Yes; I think so—decidedly.

Mr. SIMS. Decidedly above the average?

Mr. KRUTTSCHNITT. Yes.

Mr. SIMS. Then it follows, on account of the existing conditions, without going into details as to what they are and why they are,

that the credit of the Southern Pacific Railroad Co., which is above the average of the railroad companies of the United States, is 30 per cent lower than the credit of the State of New York?

Mr. KRUTTSCHNITT. As measured by the cost of money these years.

Mr. SIMS. That is, measured in that way—in the sale of securities?

Mr. KRUTTSCHNITT. Yes, sir.

Mr. SIMS. Therefore, if your securities are to sell as high in the market as do the securities of the State of New York, it must be brought about by increasing the revenue to be derived in the way of interest or dividends upon the securities?

Mr. KRUTTSCHNITT. You mean necessarily considered on a parity, by investors?

Mr. SIMS. Yes; on a parity; to make them equally as desirable for investors as the bonds of the State of New York, the bonds of the Southern Pacific, having the same time to run and all, would have to provide for an interest 30 per cent higher than the interest rate on the bonds of the State of New York?

Mr. KRUTTSCHNITT. I think so; yes, sir.

Mr. SIMS. Then, is not that statement a fair measure of the difference in private corporation credit, however good that may be, compared to State credit, as measured by the Southern Pacific bond sales and those of the State of New York?

Mr. KRUTTSCHNITT. If you will refer to the chart I gave you yesterday—

Mr. SIMS. I have not had time to study those charts.

Mr. KRUTTSCHNITT. That chart shows from 1904 to 1914 some influence at work on railroad securities that has changed the measure of their desirability in that period of 10 years. Railroad securities are not as desirable in 1914 as they were in 1904, so that something has been at work to make that change.

Mr. SIMS. There is a change?

Mr. KRUTTSCHNITT. Yes, sir.

Mr. SIMS. Whatever the cause, railroad credit is on the decline, is that what you mean to express?

Mr. KRUTTSCHNITT. Yes; it is not as good as it should be.

Mr. SIMS. And yet freight rates have not declined during that period, upon the average?

Mr. KRUTTSCHNITT. In that period?

Mr. SIMS. Yes; the gross freight rates or passenger rates have not declined upon an equal ratio?

Mr. ESCH. Chart No. 10h-2 shows a part of it, I think.

Mr. KRUTTSCHNITT. I have it here. I am computing the percentage.

Mr. SIMS. I supposed you could state it offhand. I did not mean the fraction of a per cent. Just give me the general tendency.

Mr. KRUTTSCHNITT. Between 1903, which is the nearest figure to 1904, on chart 10h-2, up to 1915, the decline in freight rates has been from 7.63 to 7.32, or about 5 per cent.

Mr. SIMS. You mean 5 per cent decline upon the average on freight rates in a like period?

Mr. KRUTTSCHNITT. Yes.

Mr. SIMS. What was the other decline that you mentioned? I do not remember the percentage. You stated there had been a continued

decline, but did not state the percentage, in the credit—I mean there would be an increase in freight rates or decline in the sale of securities on account—

Mr. HAMILTON. For some reason, he said.

Mr. SIMS. He did not say what it was. I do not know whether he has it.

Mr. KRUTTSCHNITT. The decline in credit is measured in the increase in the average yield of the bonds. That increase—or cost of the money, you can put it—that increase was 11 per cent from 1904 to 1914.

Mr. SIMS. You mean the decline in credit or the increase of the cost of the money—which means the same thing, I suppose.

Mr. KRUTTSCHNITT. Yes.

Mr. SIMS. That was 11 per cent?

Mr. KRUTTSCHNITT. Yes, sir.

Mr. SIMS. And the decline in freight rates upon an average was 5 per cent?

Mr. KRUTTSCHNITT. Yes, sir.

Mr. SIMS. So there was a widening of the margins both as to profit and loss?

Mr. KRUTTSCHNITT. Yes; but when you take the decline in freight rates for the purpose of the trend of the questions that you are asking, you should consider the net; that is, you should consider the increased cost of conducting transportation.

Mr. SIMS. Well, the decline, anyway, in credit. I will call it decline, because that is really practically what it means—the decline in the credit of the railroads for the period you have mentioned, was 11 per cent, did you say?

Mr. KRUTTSCHNITT. Yes, sir.

Mr. SIMS. It has been progressive, has it?

Mr. KRUTTSCHNITT. Yes; quite progressive—quite uniform, I should say.

Mr. SIMS. Uniform and progressive?

Mr. THOM. Uniformly progressive.

Mr. SIMS. Yes; uniformly progressive declines. That is, it has been continuous. Now, if no legislation of any kind should be passed by Congress, and if the railroads should continue to be operated as they have been, under such authority as the States should see proper to exercise, within their constitutional rights and powers, do you see any reason why the decline of railroad credits will not continue progressively in the future as it has done in the past?

Mr. KRUTTSCHNITT. If the present conditions continue?

Mr. SIMS. Yes, sir.

Mr. KRUTTSCHNITT. Whether the decline will not continue?

Mr. SIMS. Yes, sir.

Mr. KRUTTSCHNITT. I should think it was. It is like a sick man. He can get sicker and sicker, but there is a limit to how sick he can get. He will eventually die.

Mr. SIMS. A man who does not improve and continues to decline in health, is certain to die, is he not?

Mr. KRUTTSCHNITT. Yes.

Mr. SIMS. If present conditions should continue as they have been, for the periods you have mentioned, as there is a decrease of 11 per cent, or a decline of 11 per cent in par value of railroad securities.

how long will it take them, similarly declining in railroad credit, to stop the wheels completely?

Mr. KRUTTSCHNITT. Well, I should say, Judge, that with the—now, leaving aside speculative estimates—I am taking those that we are certain of—the increase that has come in the price of fuel, the abnormal increase piled on top of normal increases that have prevailed for the last 8 or 10 years, in the price of materials, in the past few years, the increase in the cost of wages will be such, in the calendar year 1917, that unless relief comes some way, I can predict with great certainty there will be a very large number of receiverships—railroads that will become bankrupt. It can not be avoided.

To give you an illustration—

Mr. SIMS. That will be all right as argument; I do not need it, as far as I am personally concerned.

Mr. HAMILTON. I think the illustration should be given.

Mr. SIMS. Perhaps it will be of advantage to the committee. Go ahead.

Mr. KRUTTSCHNITT. A few days before I left for Washington we closed the fuel contract for our steamship fleet for this coming year at an increase of \$2 per ton for the coal we have got to buy. We use substantially a quarter of a million tons a year. There is an increase in one contract of half a million dollars, for one fleet. The fuel expenses in the west end of our line have been running along steadily for the last three months at an increase of half a million dollars a month.

Mr. ESCH. Do you use oil or coal?

Mr. KRUTTSCHNITT. It is both. Some oil and some coal.

Mr. SIMS. That is due to the extraordinary conditions now prevailing, is it not?

Mr. KRUTTSCHNITT. I prefaced my remark by stating that there are some conditions existing in 1916 and 1917 that will go far to insure bankruptcy of roads that had been considered good roads.

Mr. SIMS. It will accelerate it, but with the continued decline in railroad credits, and the increase in cost of railroad operation and maintenance, it seems to me there is but one thing that can possibly be expected, and that is that they will have no credit at all.

Mr. KRUTTSCHNITT. Well, you asked me the question, and my replies were directed to your question.

Mr. SIMS. Certainly.

Mr. KRUTTSCHNITT. As to what I thought would happen this year.

Mr. SIMS. I did not mean this year. I mean in a like period.

Mr. HAMILTON. You asked if a sick man would not die.

Mr. KRUTTSCHNITT. I think a great many of the sick men will die this year.

Mr. SIMS. I did not mean to limit it to this year or any number of years, but to the future in general.

Mr. HAMILTON. Will you allow me to ask a question right here?

Mr. SIMS. Yes.

Mr. HAMILTON. Is there a compensating increase in returns to offset this very large increase in fuel expenses and other expenses?

Mr. KRUTTSCHNITT. Now, again, I must discriminate between our own road and the others.

Mr. HAMILTON. I mean your own road. You used your own road as an illustration.

Mr. KRUTTSCHNITT. As before, I use intimate statistics, the statistics of my own road, all that I could get, it being impossible to get them for the others. Our road has been singularly fortunate in the last year in that its traffic has increased very largely. We have had some, but not very bad congestions on our road. Congestions increase the expenses at an abnormal and alarming rate.

Mr. SIMS. What do you mean by congestion—congestion of freights?

Mr. KRUTTSCHNITT. Yes; inability to get rid of it. Our one inability has been at Galveston and New Orleans, where our railroad lines connect with the steamer lines. That was due to the inability to get steamships. We would pile more freight into those ports than we could possibly ship. We tried to get more boats, and succeeded in making a great many outside charters, paying for some of the charters the entire freight earnings that we got; in other words, leaving nothing for the net, and in three or four instances I authorized charters where we paid more for the outside ships than the earnings on the freight, simply to maintain the prestige of the company and keep the freight moving.

Mr. HAMILTON. So you are actually hauling at a loss?

Mr. KRUTTSCHNITT. We are hauling at a steamship loss. We divide the proceeds in carrying the freight between the rail lines and the steamship lines. The steamship lines—the outside ships—carried it at a loss.

Mr. HAMILTON. But there was a gain when you figured the land line?

Mr. KRUTTSCHNITT. Yes, sir; considered as a whole, there was. I say we have been singularly fortunate in the last six or seven months. The volume of our traffic has been so large that if I had been asked beforehand whether we could have handled it or not, I would have said, without hesitation, no, we could not handle that much; but the volume has been very great. That is why I put the clause in one of my statements yesterday that the traffic under ordinary conditions might be absolutely unremunerative, yet if you increase the volume enough it may become very remunerative. The Southern Pacific rates have fallen, as I remember it offhand, 12 or 13 per cent in the last few years, but its gross and net earnings have been extremely satisfactory because of its excessive volume. But at the present rates and present scale of expenses, if some power cuts that volume down to what it was in 1914, I should say that the Southern Pacific would be very, very sick.

Mr. SIMS. In other words, your fuel charge is likely to stay up; while it may come down some, you think it may not come down in proportion to your income decline, if, we will say, these abnormal conditions should become normal?

Mr. KRUTTSCHNITT. Generally, prices go up very rapidly; but it has been the experience of everyone of us that when prices go up they are extremely slow in coming down again. They will, no doubt, come down eventually.

Mr. HAMILTON. You mean the prices of commodities and not the price of the service; you distinguish between prices of commodities and freight charges?

Mr. KRUTTSCHNITT. We generally call that rates.

Mr. HAMILTON. You distinguish between prices and rates?

Mr. KRUTTSCHNITT. Yes, sir; and we have it in our household expenses. I remember in August, 1916, when this threat of a general strike came on, the tradesmen in the little Connecticut town where I lived raised their prices tremendously. The excuse was we were going to have a strike. The prices went up, and we were advised that we had better get under cover. I was absent from home, but my wife accepted their advice and loaded up with canned goods, flour, and a half a barrel of sugar, etc., and when the fear of the strike was over, when it was temporarily settled, the prices never came down. They remained where they were; the assigned cause had vanished, but the effect was not evident. So it is with all commodities. They go up, and those controlling those commodities for self-interest do not want them to come down, because they are making more money.

Mr. SIMS. Now, Mr. Kruttschnitt, you referred to the fact, and stated it was a fact, that bank stocks—national-bank stocks, national banks being regulated by the Government—

Mr. KRUTTSCHNITT. And where they are not, the State banks of almost every State are quite as closely regulated as the national banks are.

Mr. SIMS. I understood you to mean national banks, national-bank stocks regulated by one authority.

Mr. KRUTTSCHNITT. I did.

Mr. SIMS. And you stated, as I remember, bank stocks paying 6 per cent dividends sell for a very large amount more than do railroad stocks paying 6 per cent dividends, subject to diverse and multiple regulation, for the purpose of comparisons. I do not remember the difference you mentioned, but it was large.

Now, I wish to ask you if that is, in all respects, a fair comparison, for this reason: The bank stock is all paid for by the owners of the shares. The bank has no capital except the capital paid in by the owners of this stock. It is not mortgaged, hypothecated, or anything of that kind. Consequently, the bank, not having to issue bonds or increase its capital by burdening or mortgaging its property, would have a tendency to increase the value of the shares of that bank, paying a similar dividend, over any kind of an industrial stock, which is secondary in consideration to a mortgage upon the same property; further, banks do place, as a rule, earnings over and above the per cent paid out in dividends to a surplus fund, and it is often the case that the surplus fund of a bank exceeds its entire stock issue, and therefore if that is different in banks, although regulated to some extent—regulated by the National Government—does not that make a difference in the selling value of the shares as compared with railroads having Government regulation and also State regulation; is it not, in part, due to the fact that the railroad is mortgaged and the stock does not represent the absolute unencumbered title to the property itself; in other words, is that comparison on all fours—are the two situations so analogous as to make that a fair comparison as to the effect of regulation by one authority or many?

Mr. KRUTTSCHNITT. There may be some little effect to what you speak of, as, the bank having no mortgage, unquestionably the price of bank stocks is kept up and is high because the banks do earn a

surplus over their dividends; and if all the roads of the United States earned a fair surplus over their dividends, unquestionably their stock would stand a good deal higher and their securities would than they do now. My illustration was intended principally to contrast what a reasonable, constructive, conservative regulation did for bank stock, and I have no doubt that the close supervision kept of the business of national banks by the Federal Government enhances very much the price of their stocks at which they are held in the open market. But we do say, on the other side, that the little respect paid, the little consideration paid to constructive regulation by the diverse masters of the railroads has a good deal of influence in the other direction.

Mr. SIMS. I do not question that at all, but I did not think they were on all fours, because the banks are not regulated by the different States as the railroads are, neither do they have encumbrances which are a lien on their earnings.

Mr. THOM. Do they not have obligations, debts, coming ahead of the stock?

Mr. SIMS. The property of the bank is subject to the payment of debts, and the stockholder is also liable for an assessment of an equal amount of his stock if the bank does not pay them.

Now, Mr. KRUTTSCHNITT, I understood you to say in the beginning of your first statement that the public will have to be coaxed by larger interest rates on railroad bonds in order to make them sufficiently attractive to answer the purpose of the required credits of the railroad companies. That is substantially what you said, did you not?

Mr. KRUTTSCHNITT. I think so.

Mr. SIMS. They will have to be coaxed by increasing the interest rate of the bonds, and, of course, to increase the interest rate there must be an increase of earnings, provided the rates of interest can not be paid out of the present earnings, and the railways maintained in such condition as to perform the services required?

Mr. KRUTTSCHNITT. That is one of the burdens put on the railroads. In other words, to get a hundred dollars of borrowed money they have got to pay more than they otherwise would if they were not handicapped by these handicaps to which I have called attention in my direct statement. That is also shown in the chart, which shows the gradual increase in cost of money to railroads.

Mr. SIMS. Then you are positive—that is, that is your judgment about it, not taking one particular railroad but taking them all in mass—that the return on bonds, in view of existing conditions and what seems to be reasonable and probable for the near future, will have to be higher in order to coax investors sufficiently to market the bonds in such quantities as will be needed?

Mr. KRUTTSCHNITT. Yes, sir; or “attract” is probably a better word than “coax”—to attract investors.

Mr. SIMS. That is what I mean; “attract” has the same meaning. I used it because you used the word “coax.” Then you follow immediately by saying that high rates of interest paid on railroad bonds are not in the public interest. That is a positive statement also of yours, of which you have no doubt, I suppose?

Mr. KRUTTSCHNITT. No. The lower the rate at which the railroads can get money the less they will have to earn from their properties, and what they earn from their properties can come from nothing but rates paid by the public.

Mr. SIMS. Well, a high rate of interest paid on railroad bonds is not in the public interest, and, whatever may be the cause, higher rates will have to be paid in the future than have been paid in the past in order to attract private investors sufficiently to meet the requirements of the railroad companies?

Mr. KRUTTSCHNITT. Yes, sir; I think I said that substantially.

Mr. SIMS. That is the conclusion and is stating the facts as you see them now and as they likely will be. Consequently we are faced by a situation that is not and can not be conducive to the public interest; and you, I believe, with others, have stated, and I believe it is generally admitted, that on account of the vast offers of securities of ordinarily high grade, and which will be of relatively high grade in the future, at a higher rate of interest than has ever heretofore been offered, that will necessarily either cause the bonds of the railroad companies to have to bear a higher rate of interest or sell for less money on the market?

Mr. KRUTTSCHNITT. Yes, sir; the two really mean the same. If they sell at a lower rate and bear a certain rate of interest; it means higher money.

Mr. SIMS. With the vast amount of Government bonds coming on the markets of the world due to the recent war—I mean to the existing war of nations—and our own Government bond issues may be very largely increased, due to similar causes, how is it going to be possible with any sort of regulation, or with the lack of any sort of regulation, to cause railroad bonds to sell upon the same parity that they have heretofore sold in competition with all this tremendous increase of offerings of high-grade securities?

Mr. KRUTTSCHNITT. I have explained—I tried to explain—in my direct statement some of the handicaps to which the railroads are subjected. I believe if you will remove these handicaps their credit will be improved.

Mr. SIMS. You think their future credit will be improved?

Mr. KRUTTSCHNITT. Yes, sir.

Mr. SIMS. That is, it will be better in the future than it would be without that?

Mr. KRUTTSCHNITT. Yes, sir.

Mr. SIMS. But from the information which you and others have furnished this committee, will not railroad credit be depressed by reason of the increase in competition in the offering of securities that are of equally high grade—Government securities bearing interest larger than many railroad bonds now bear or have borne?

Mr. KRUTTSCHNITT. Yes; the investor will compare the relative securities of the two, and particularly the securities as to the future, and he will act accordingly.

Mr. SIMS. If railroad securities have to be sold in competitive markets, competing with securities having speculative values in addition to investment values, will not railroad securities suffer in value by comparison with all other securities having both investment and speculative values?

Mr. KRUTTSCHNITT. I should think they would.

Mr. SIMS. This was suggested by what Senator Townsend asked, and your answer to it. I have asked this question based upon the idea that in the future there will be no speculative element to go

along with the sale of railway securities that would prove an element of attractiveness to a purchaser who might have a speculative disposition; or, in other words, he would be willing to give more for a railroad bond that carried with it a bonus of stock or something of that kind. Although valueless at the time, the stock might become afterwards of some value.

Mr. KRUTTSCHNITT. Yes; but in a bond the speculation would come in the price at which he would expect to get it.

Mr. SIMS. Some industrial bonds are sold, carrying with them permission to purchase stocks lower than the market value, or stocks not having any market value at the time.

Mr. KRUTTSCHNITT. What I mean is this: That if you take two sets of bonds, both being 5 per cents, and a man should come to the bargain counter and look at them and find that one bond paid 5 per cent, that the return was certain on it, that he was not taking any chances either as to principal or interest in investing, and he looked at the other bond and found that while the interest was reasonably certain it was not as certain as the other, he might say, "Well, I am willing to give par for the first bond, but there must be a little speculation in the second; I will only give 90 for the second." Now, the speculation comes in there as to the enhancement of the value of the bond through the operations of the property.

Mr. SIMS. This question of mine ought to apply to stocks as well as bonds, because I understand it is not desirable for any railroad to have its whole value covered by its bond liability; that there should be some margin between bond liability and actual value, which should be represented by stock ownership.

Mr. KRUTTSCHNITT. You are quite right; but I did not think at the time of saying this to Senator Townsend, but I will say it now: That you can not prevent a man from speculating, I do not care what the nature of the bond is. Let us assume a United States Government bond, which is the standard of stability and return. Suppose United States bonds are to-day selling at 104. Through something that occurs they may fall to 95. Now, a man coming to buy bonds is going to speculate on that margin between 95 and 104. He may say, "Well, this fall in bonds is perhaps due to this war scare and I do not believe this war scare is all that it has been made to be. I am going to take a chance; I will buy these bonds at 95, though the rate is very low and the return poor, and I will gamble on there being no war and that they will come back to 103 or 104, in which case I will have made a very favorable investment." No matter what the security or the bond is, you can not prevent speculation, and that is evidenced by the fact that the bonds do not remain at a fixed market value. Their value fluctuates, not as rapidly as stocks, because the earnings on stocks are contingent; on bonds, as I said yesterday, interest must be earned or bankruptcy faces the corporation. But the fact of fluctuation in the prices shows that the element of speculation always comes in.

Mr. SIMS. That is an element to this extent, I suppose, that naturally persons would buy when things were low and sell when they were high, and if the bond was thought to be low by the investor he would purchase it. But at the same time the railroad company

selling that bond is losing by having to take a less price for it in order to attract speculative investors; and what I had in mind was, how are we going to issue railroad bonds, and what regulation in law shall apply to them that will enable them to be sold for the greatest amount of money in the markets?

Mr. KRUTTSCHNITT. By insuring the railroad a reasonably certain revenue, by fixing it so that when volume shrinks very much the shrinkage of volume may be followed by a reasonably prompt increase in the rate, or vice versa. If the roads under a given rate, with a very large increase of volume, are earning too much, that is a valid reason to consider a reduction of the rate. But there should be flexibility, and greater flexibility than now, and that flexibility can only be gotten by lodging the rate-making power in one body instead of 48 or 49 and by having it reasonably promptly responsive to the needs of the railroads.

Mr. SIMS. I believe you stated that there are 20 States that regulate hours of service. We have 48 States. Therefore there are 28 States that do not regulate hours of service. But does it not stand to reason that if the States regulating hours of service show results that are popular in those States that then the other 28 will adopt regulation of hours of service?

Mr. KRUTTSCHNITT. Yes; but even those that have adopted them have not adopted uniform ones.

Mr. SIMS. But they have adopted some sort of regulation; and this regulation of hours of service by the States is one of the things you present as affecting railway credit—expense of operation, and so on. Therefore, as only 20 States have adopted it, and as the 28 other States may adopt it, the chances are that if this affects operating expenses now to a material degree that when they all regulate the hours of service it will have a still greater effect, will it not, on railroad credit?

Mr. KRUTTSCHNITT. Yes, sir; we will be even worse off than we are now.

Mr. SIMS. Yes; I was going to say you will be worse off.

You also state that 19 States have asserted their rights to regulate bond and stock issues. Do you mean 19 States have passed laws authorizing it, or what did you mean by saying that they have asserted their rights? That was the language you used, but I do not know what you intended specifically.

Mr. KRUTTSCHNITT. I would understand by that that proposed issues of securities must be submitted to some regulating authority.

Mr. SIMS. In other words, they have laws requiring them to be submitted to a State authority?

Mr. KRUTTSCHNITT. Yes, sir.

Mr. SIMS. Now, do you also think, or do you not think, that that authority has at least a sentimental effect upon the value of securities?

Mr. KRUTTSCHNITT. A sentimental effect?

Mr. SIMS. Well, a market effect.

Mr. KRUTTSCHNITT. I think it certainly does affect the market prices.

Mr. DOREMUS. Adversely?

Mr. KRUTTSCHNITT. Adversely, of course.

Mr. SIMS. If all the other States adopted similar statutes, would it not still further impair railroad credit?

Mr. KRUTTSCHNITT. I should say, then, that the worst is yet to come.

Mr. SIMS. Does it not stand to reason that if 19 States have thought well enough of this power to assert it that the rest of the States in course of time will do the same?

Mr. KRUTTSCHNITT. Yes; and that if the assertion on the part of 19 States hurts credit, the assertion on the part of the remaining States will still further hurt it.

Mr. SIMS. I do not see how any other conclusions can be reached; and that the reasonable probability is that the rest of the States will assert it, provided it is proven to be of value to the States that have asserted it.

Mr. THOM. You mean unless Congress intervenes?

Mr. SIMS. I mean as it is now.

You stated, according to my note here, that almost all loss of revenue is caused by regulation?

Mr. KRUTTSCHNITT. Almost all loss?

Mr. SIMS. Almost all loss. That is, you were speaking of the decline in railroad credit, or losses affecting the railroads, on stocks and bonds, as I understood it. I may not have that accurately. As I stated, I have just made hurried notes here.

Mr. KRUTTSCHNITT. It does not sound familiar to me.

Mr. SIMS. It is revenue, not stocks. "Almost all loss of revenue is caused by regulation." That is the way I have it down. I suppose you have reference to the regulation to which they are now subject?

Mr. KRUTTSCHNITT. I probably said, or probably meant—no doubt meant—that the loss of revenue was due to the control exercised on rates by either the Interstate Commission or the State commissions.

Mr. SIMS. I understood this to cover it all—"almost all loss."

Mr. KRUTTSCHNITT. Of course, there would be another influence at work to which I have called attention several times this morning, that there might be a very large loss in gross revenue through a diminution of volume without any change of credit.

Mr. SIMS. Yes; that is incidental. I think I made this note from your typewritten statement, and, of course, it is in there, whatever it is; but I wanted to ask you about it. The way I have it here is "almost all loss"—not all, but almost all.

Now, further—I am confident that I am exactly right about this—in referring to operating expenses or capital charges, either or both, you say they have been increased or augmented "by needless and costly terminal stations." I intended to quote that exactly from your language. Therefore that implies, I suppose, beyond any question that there have been needless and costly terminal stations that have been required by State regulation or local regulation, or some kind of regulation.

Mr. KRUTTSCHNITT. I am quite certain that you have one word in there that I did not use.

Mr. SIMS. What is that?

Mr. KRUTTSCHNITT. That is "terminal."

Mr. SIMS. "Terminal stations" is the way I wrote it.

Mr. KRUTTSCHNITT. What I had in mind was this, and it is a trouble that we have experienced in a great many States and that

is orders to build costly stations—not terminal stations. I was talking of our own experience. Numbers of orders have been issued to build costly stations to take the place of others that were serving the public perfectly and adequately.

Mr. SIMS. I will strike out the word “terminal.”

Mr. KRUTISCHNITT. The object of these orders and the reason I complained of them was that some of them rankled still. The orders were issued on roads whose physical condition was not such as to properly serve the public, and although we asserted our judgment to the commissions that we should be allowed to spend the money that we had for ballasting, for rails, and for better bridges, they brushed all that aside and compelled us to spend the money for stations that we thought were not needed. There has been a number of instances where the Southern Pacific has been ordered to tear down a perfectly serviceable, clean, and well-kept wooden station building and to put up instead either a stone or a concrete or a brick building. Now, for years we have held the reputation, and I think we have deserved it, of being the best housekeepers in the United States; that our buildings for the service of the public are better kept, they are scrupulously clean, and at all times they are well painted, well kept up; and in a great many cases the surroundings of the passenger stations are nicely graveled; there is a small grass plat or a flower bed, and the surroundings are made as attractive as possible to the public using them; and we know that the public has had no cause for complaint, except perhaps some man interested in a real-estate scheme, or some one desiring, as they often say, to have a monument at the entrance of the town, at the railroad station, and therefore they want a brick or a concrete building instead of this wooden building. It is a natural desire, but I do not think that when the managers of a property represent to the regulating body that there is a much more urgent need elsewhere, and in directions where the public can be much better served, that they ought to sweep aside the judgment of those men and substitute their own, to what seems to us to the detriment of the general public.

We have a complaint now, and I have often referred to it, because I have repeatedly said to our directors that I did not know of a single case of irritation or trouble on the whole line of the Southern Pacific, after one of my inspection trips and mixing with the people; and that grievance I do not think anybody could ever imagine if they should guess a hundred years. The grievance is this: We have in the heart of the city of Oakland a block of ground that formerly, years ago, was used as a local freight station. We have built on one corner of it now a passenger station for the accommodation of our suburban passengers—a station into which they merely rush to get their tickets and rush through to the trains. The rest of the block, which is vacant, has been sodded and is simply a bit of lawn. The grievance is that a party of real estate men in Oakland, who own property near this, have got it into their heads that we should spend from a million and a half to two millions to erect a monumental office building on this block, because, say they, “as long as this lawn is there our property does not increase in value.” We have told them time and again that if we had \$2,000,000 that we did not know what to do with we would not object; but at

the present time there are many directions in which we can put it to give better service to the public, better ballasting, heavier rail, better freight receiving facilities, than to put it in a monumental building here, simply because they want us to improve the property.

That is one of the greatest sources of irritation on our road that I know of at the present time—the greatest.

Mr. SIMS. Mr. Kruttschnitt, I did not mean to question the accuracy of your statement. Possibly I did use the word “terminal” in error, because we have been using it so much. I might have written it unconsciously. But after all, it is a fact that State regulation, or local regulation, or demand, or something, whatever it may be, is causing railroad companies to put up needless and costly stations.

Mr. KRUTTSCHNITT. Yes, sir.

Mr. SIMS. And what I want to ask you about is this—I am admitting that that is a fact as a matter of argument and if it is due to the retained or potential power that the States have over railroads, or if it is due to the exercise of the power of the States through their commissions, if one State requires a certain standard of stations which is, according to your judgment, needless or useless, will it not have a tendency to cause every other State through which that railroad runs to want to be treated just like that State, and to have stations just as good and just as expensive as the other—the railroad having already built such stations at the demand of the railroad commission of a State or for any other reason?

Mr. KRUTTSCHNITT. Well, I can not say that it would induce them. They are all at it now.

Mr. SIMS. Then you do not expect that cause of useless expense to abate without legislation that will enable you to refuse it without bearing the penalty of a refusal?

Mr. KRUTTSCHNITT. I suppose we have got to live under that, as we have. In other words, we will continue our arguments with the regulating bodies. Sometimes the personnel changes and certain men are not as unreasonable as others.

Mr. SIMS. Well, is not legislation—

Mr. KRUTTSCHNITT. There are ups and downs in that. I have already spoken in the highest terms of one railroad commission. By the way, I noticed that the President himself stated that the relations with the railroads are altogether pleasant. They are because the commission is a reasonable one; because you can sit down to a table and argue questions out. If you make a reasonable showing, they will decide your way. There are other commissions which will never decide your way no matter what your argument is. That is a condition under which we have had to live and which I suspect we will have to continue to live under.

Mr. SIMS. The cost of railway service, then, to the public, is not all shown by the gross receipts of the railroads; in other words, these State commissions and local authorities which exercise a regulative control are an expense to the States that have them, and all expenses are directly or indirectly a burden to transportation. Is not that true?

Mr. KRUTTSCHNITT. That is true, but there are certain expenses—there is a control of certain expenses that I do not see how you can take out of the hands of the States—that is, as to these local matters.

I enumerated the demands made on us for useless stations as one of the handicaps we labor under.

Mr. SIMS. Why can't that power now exercised by the States be taken out and placed under the control of the Federal Government, as well as any other power exercised by the States?

Mr. KRUTTSCHNITT. Theoretically it could, but I don't suppose the Federal Government would be very familiar with the facts, we will say, at Fair Oaks station, in California. That is an actual case, as to whether it should have a pagoda or flag station or whether there should be a water-closet there. The commission would not understand the situation as well as the local people out there.

Mr. SIMS. The argument you make is that the State commissions are an increased expense to the railroads, because the demands of some States are not uniform, and therefore the demands of one State, if complied with, would be practically a discrimination in its favor by the railroad company, unless other States make uniform demands. Now, if all the States make demands for useless and expensive stations, is not the burden of that on the operations of the railroads, or its revenues, to be progressive and ever increasing, if this power is to remain where it is now? Is not the very fact you must give uniform service in every respect one of the reasons why you want a national charter, to put all control under the National Government?

Mr. KRUTTSCHNITT. It seems to me I can answer your question best by comparing the condition of the carriers to a man who, perhaps, has a very severe or very bad carbuncle and corns that interfere with his powers of locomotion and sitting down, and might also have a small pimple on his cheek. It would interest him much more to get rid of the carbuncle and corns and let the pimple take care of itself. In other words, he can stand it. The carriers, if they can have one power to take care of their revenues, which is their life—their 100 per cent—they could very well leave the control of certain of their other expenses, amounting to a small fraction of the revenue, in the hands of the States, where it is now.

Mr. SIMS. In other words, leave the pimple?

Mr. KRUTTSCHNITT. Yes; bear the pimple, if they could get rid of the carbuncle.

Mr. SIMS. But if the person who has the pimple is very anxious to get rid of it, and is having the operation performed by a doctor who could get rid of both the pimple and the carbuncle at the same time, why should he reserve the pimple?

Mr. KRUTTSCHNITT. Well, to continue the simile, it might be a fellow with a limited amount of money; only enough money to stand the cost of an operation for the carbuncle. He will say, "I will take the risks of the pimple."

Mr. SIMS. But when you are proposing legislation to remove a carbuncle, why leave a pimple, even if it is not as expensive or as hard to endure as the carbuncle? Why is it being left? For the life of me I do not know why you railroad people want to leave this matter that you complain of with the States. Not a member of your railroads' representatives who have appeared before this committee but who has made complaint of the exercise of the power of the States as an added cost on operation or service, but then in proposing legislation to remove troubles you do not provide for the removal of all of them.

MR. KRUTTSCHNITT. I should say, Judge, it is a good deal this way, that we are laboring from a 100 per cent of evils; that we have enumerated them all so that you might understand fully our condition; we are asking you to remove most of them by eliminating this control of 48 or 49 masters over us and putting it under the control of one. In other words, I should think if we should ask for all we would probably not get it.

MR. SIMS. That is exactly what I wanted to know.

MR. KRUTTSCHNITT. If we asked for the most important, we feel we might get Congress to see the necessity of giving some relief.

MR. SIMS. In other words, remove the carbuncle.

MR. KRUTTSCHNITT. Yes, sir.

MR. SIMS. And if Congress removes the carbuncle will you not later on come and ask Congress to remove the pimple?

MR. KRUTTSCHNITT. No; a man might be so appreciative of the relief from the carbuncle that he might forget the pimple.

MR. SIMS. I do not see any use of making two bites at a cherry. I do not see why you should come here and ask—

MR. ADAMSON. Judge Sims, if the first surgical operation were successful it would inspire the patient with more confidence to come back for the second operation, don't you think?

MR. THOM. I have noticed the trend of your questions, Judge, and I want to say for the railroads that they have no covert purpose—

MR. SIMS. Oh, I do not think so. I do not understand how they could have a covert purpose.

MR. THOM. They are not using this as an entering wedge. They do not propose to do anything more than lay their whole case before you; to tell the thing that is essential to their prosperity and their duty to the public. They have nothing in the background about coming again.

MR. SIMS. Now, I want to say this most emphatically, because I do not see how you can escape it: That if the State of Illinois collects from the railroads in the State of Illinois \$5,000,000 a year in taxes, and the State of Indiana does not collect a cent, and the railroads willingly pay that \$5,000,000, that it is in effect a rebate to that State. If taxation is not to be uniform on railroads in all of the States, on all the railroads doing interstate business, I think it amounts to more than a mere pimple, because it can become a carbuncle. Illinois next year can put it, of course, within the limits of their constitutional limitations, high enough to make the railroads pay all the expenses of the State, and if necessary it will not take long to amend their constitution so that they can do it.

MR. KRUTTSCHNITT. The view we take of it is this: Illinois can not treat the railroads with such clear injustice as you suggest without treating all of its other citizens in the same way. It can not make railroad taxes confiscatory. If, at the same time, it keeps the taxes within reasonable limits on the other industries and citizens, we have found, from our dealings in the past, that we can trust our fellow citizens to treat us justly, and, to abandon the simile of the man with the ailments, and take this little circle showing the disposition of the dollar, the circle itself represents a hundred cents to the railroads. That is its revenue; it is all it can earn. Now, we are asking you gentlemen to consider protecting us as to the earning power of the entire dollar—the 100 cents. There is a little slice in

there of taxes, taking up, at the present time, four and a half cents out of the dollar. We are willing to risk that with the States that are handling it now. They control four and a half cents of the dollar. The body controlling our revenues controls 100 cents. The relation of the two is very nearly 25 to 1.

Mr. SIMS. All I have to say about it is that if a railroad company—should you have a national charter with the power to act and treat all States exactly alike by requiring uniform taxation—that if a railroad director in that company did not exercise that power, when one State levied twice as much as another State on the railroad running from one State into another, such a director would not be doing his duty as such. If the irregular tax burdens under the different States are to be such that Texas may burden the railroads running through it to such an extent as to make it impossible to render as good service to all the States through which it runs as it otherwise would, to that extent they ought to lower their taxes to the common level so as not to be getting in effect and fact a rebate upon the railroad service in that State. I do not see any use of being modest or backward about it, because one of the complaints made by the railroad representatives is that taxation is not uniform on railroad properties, as compared with other property in the several States.

Mr. ADAMSON. How can you affect that, or change that. Judge Sims, by transferring it to the Federal Government or forbidding the States from taxing at all?

Mr. SIMS. If Congress grants a national charter, Congress can state whether the States may continue to tax the railroads or not.

Mr. ADAMSON. They can say just the same about the State charters, as well as the national charters.

Mr. SIMS. They can stipulate the provisions of the national charters.

Mr. ADAMSON. They can regulate anything in interstate commerce.

Mr. SIMS. Mr. Kruttschnitt, I think you have been very fair and open, and I think all the witnesses have been, but every complaint that is made against State regulation is based upon the idea that the State is getting a special benefit out of that regulation. I speak with reference to Texas, because that has been discussed so much. The very fact that States can do what you say they can do, the very fact you comply with those requirements—all that is an inducement on the part of the States to refuse national incorporation—that is a reason for refusing it. I think this investigation is very illuminating, and I think you have been candid and ought to be candid, but how do you expect to get Representatives elected by the States to rise—as it has sometimes been referred to—to rise above local conditions and pass a law such as you admit as to the States exercising such powers is to their interest to continue to exercise those powers? How do you expect to get a law passed for national incorporation—

Mr. KRUTTSCHNITT. Do not the representatives of the different States admit that they have national obligations to perform as well as local ones?

Mr. SIMS. Yes; they are national representatives.

Mr. KRUTTSCHNITT. I should think, then, it was entirely within their power and proper that they should say, "While we have the

right to take over everything—rates, taxes, road crossings, and new stations—we do not think, in the public interest, that it is necessary to do that.” Could they not say, “We think that these evils, or most of them, can be corrected by our turning over to the National Government the power of regulating revenues and of passing on security issues and fixing rates generally, and we leave to the States everything else”? Take it as a matter of expediency. I suppose if you proposed to absolutely emasculate State commissions, there would be an infinitely greater opposition to whatever you wanted to do than if you recognize their rights to do certain things and only proposed to deprive them—pardon me, Mr. Chairman, you will notice I substitute “deprive” for “rob.”

Mr. ADAMSON. I forgive you. However, I can not forgive you for desiring to deprive the communities of their right to regulate that 12 per cent of the business which is confined to them alone, with which the General Government has no interest, and that does not cross the State line and can not in any way affect interstate transportation.

Mr. KRUTTSCHNITT. Pardon me if I disagree with your percentages. I have asked for the Southern Pacific percentages.

Mr. ADAMSON. Judge Lovett said 12 per cent was the percentage on his road.

Mr. KRUTTSCHNITT. They are very different on ours, but still I stand by my answers to Judge Sims. I think the public generally would consider that that position was quite reasonable.

Mr. ADAMSON. I am not going to forgive Judge Sims for his language “rising above the local requirements.” I think he should say “betray his local constituents.”

Mr. SIMS. I should have said, perhaps, “in defiance of his constituents.”

Mr. ADAMSON. You must remember there are two arms to this Government. A part of the duty lies with the Federal Government, and a large part with the States. If you will read the Constitution you will observe the rights of each to perform its own functions.

Mr. SIMS. Yesterday, Mr. Kruttschnitt, you stated, if I do not quote you wrong, that the railroad system has broken down—our present system.

Mr. KRUTTSCHNITT. I read the quotation from a manufacturing record making that statement. You asked at the time if I indorsed it, and I said yes. I do, in the main. You can quote something without absolutely indorsing everything. I think I should not go as far as the record does, and I showed that in my personally written memorandum. I should say that a better language would be that it is breaking down.

Mr. SIMS. That our system is breaking down. You said it had broken down, as I understood it.

Mr. KRUTTSCHNITT. The editorial writer did say it had broken down. I think it is more accurate to say it is breaking down.

Mr. SIMS. I quoted you as I understood you at the time.

Mr. KRUTTSCHNITT. That is right.

Mr. SIMS. It is no longer a question of choice as to whether this breakdown is complete or not. The railroads have been built and have covered the whole country and are performing a service that the

country can not do without. That being so, then it is a national breakdown and not local, and if legislation can not be passed preventing its complete breakdown and retain the ownership where it is now, in private corporations, there must inevitably follow—I believe you referred to it yesterday—Government ownership of the railroads.

Mr. KRUTTSCHNITT. I think this——

Mr. SIMS. The present system is breaking down?

Mr. KRUTTSCHNITT. There are three conditions: There is a breaking down under present conditions; there is the ultimate solution—Government ownership—but there is an intermediate solution. We claim that regulation has never been given a fair show, and that that is the fair thing to do as between the public and the owners of the railroads before applying the last remedy.

Mr. SIMS. We should further experiment with regulation?

Mr. KRUTTSCHNITT. I should say that I think it is beyond the realm of experiment; that you gentlemen are competent to frame legislation here that would remove future legislation from the realm of experimentation and put it in the realm of unqualified certainty.

Mr. SIMS. But regulation is a failure, according to your statement.

Mr. KRUTTSCHNITT. But it has not been proper regulation.

Mr. SIMS. Will you ever have proper regulation, from your viewpoint?

Mr. KRUTTSCHNITT. It is in your power to give it; but whether or not we get it is in your hands.

Mr. SIMS. Were you present when I asked Judge Lovett the question about the authorization of the creation of one corporation in the United States and giving it power to purchase by agreement or condemnation every railroad in the United States?

Mr. KRUTTSCHNITT. I think I was.

Mr. SIMS. And give it power to issue bonds, not exceeding 4 per cent, and guarantee them; provide that the bonds shall neither be taxed by the States, Nation, or county; stocks to be issued, bearing 6 per cent, without any income tax?

Mr. KRUTTSCHNITT. I listened with a great deal of interest to the points in your bill, and while some seemed to be attractive it seemed to me it was fatally defective in this, you permitted the earnings of 6 per cent but did not guarantee anything on the stock.

Mr. SIMS. If this one corporation buys all the railroads and owns them all the service will be uniform and similar in every part of the United States, and its credit will be sufficient to cover all the weak roads now giving a weak service, and make a uniform and efficient service. I consider that the twilight zone of the present condition and ultimate Government ownership.

Mr. KRUTTSCHNITT. It does not follow that the earnings on the stock would be made.

Mr. SIMS. It does not make any difference whether you make them or not. You do not have to buy them. We will issue all the bonds necessary to buy all the roads in the United States and build more—all that is needed—allowing the Government, of course, to have directors in the corporation and to be controlled by the Interstate Commerce Commission.

I do not think I want to ask you anything to-morrow except touching the labor matters to which you have referred, and I hardly think

I will occupy more than 15 or 20 minutes. Of course, I do not know about that. Your answers may require more time, and I think you should not be abridged in your answers.

Mr. KRUTTSCHNITT. You say I have dealt with you frankly, and I will continue to do so.

Mr. ADAMSON. I wish to say here, that there is no man in America more anxious to see the system of railroads prosper and succeed, but I want to state that in 1904, 1905, and 1906, when we were trying to enact regulation by Congress over the railroads, the railroad men came over to me—I remember in 1904 we sat for 12 weeks in our committee hearing this matter—and they lifted their hands in holy horror at the suggestion that the Government regulate the railroads. They wanted State regulation then. Later, when Mr. Townsend brought in a bill for Federal regulation in the House it was defeated. Up to that time the railroads were opposing it, and the men wanted it. They have reversed themselves now, and that is a matter that renders us more or less incredulous in these matters.

Mr. KRUTTSCHNITT. I came from a State myself, but I was rather young at the time. However, I remember there was a lot of blood and treasure spent to settle that question, but I have considered it settled ever since.

Mr. ADAMSON. I am talking about the course the railroads took at one time and their course now.

Mr. KRUTTSCHNITT. The railroads, of course, have made mistakes, and I want to testify that the railroads have done a great many things that we do not now approve.

Mr. ADAMSON. I have never shot anybody in sustaining the doctrine of State rights, but I do stand on the doctrine of the States being allowed to compel the railroads to perform their duties in the various States.

We will adjourn now until to-morrow at 10.30.

(Whereupon, at 1.35 o'clock p. m., adjournment was taken until to-morrow, Wednesday, March 28, 1917, at 10.30 o'clock a. m.)



## INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT CONTROL AND REGULATION.

WEDNESDAY, MARCH 28, 1917.

UNITED STATES SENATE,  
JOINT SUBCOMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The joint subcommittee met at 10.30 o'clock a. m., Hon. William C. Adamson (vice chairman) presiding.

Mr. ADAMSON. The committee will come to order. Judge Sims, you may proceed.

### STATEMENT OF MR. JULIUS KRUTTSCHNITT—Resumed.

Mr. SIMS. Mr. Kruttschnitt, as you are not a lawyer, I have thought you would be a more valuable witness, in some respects, than a lawyer would, from the fact that you are not looking at it alone from the possibility of legal requirements or legal power, or court decisions; but I do not want to appear to be using an undue part of your time, or holding you over here unnecessarily, and I certainly have no thought of exploiting any views of my own or any propositions of my own, but I do want to ask you somewhat in detail about the suggestion that I made the other day.

I assume the country is not willing nor ready to go to Government ownership. I am satisfied that nobody wants us to go to Government ownership, if through private ownership the country can be best and most economically served. Some of the objections raised to Government ownership, as presented by Judge Lovett, were in the nature of "pork-barrel" objections; that Members of Congress would demand unnecessary construction of roads, and one thing and another, to meet the requirements of their districts, and so forth and so on; all of which is practical and well to consider. Then, the disposition, or, rather what we assume would be the adverse position of States and counties to being deprived of all local control, taxation, and one thing and another that might possibly come about through national incorporation, as shown even in the investigation here, in the positions taken by the representatives of railroad properties, that they do not propose to deprive them of that which they might otherwise do, simply in response to local sentiment; but, as between that which you all admit is absolutely inevitable—a betterment of present conditions or Government ownership—there might come between it a unified consolidated private ownership, with absolute Government regulation through the Interstate Commerce Commission or any other body that Congress might authorize to do so, and making all the railroads liable for all the necessary issues of stocks and

bonds, giving the Government the power to control them, and guaranteeing a rate of interest on the bonds not exceeding 4 per cent, and making both bonds and income free from taxation, and allowing a margin of profit between 4 and 6 per cent for stock, but not guaranteeing that 6 per cent on the stock, nor any other sum, but relieving the stock and dividends from all character of taxation, so as to enable the strong roads to carry the weak roads, and enable construction to be had where it is necessary to develop portions of the country, where the development itself would not afford sufficient revenues in order to have the development undertaken by private capital.

Now, I do not know whether that is wise or feasible. I was only trying to think of something that would get away from the "pork-barrel" possibilities referred to by Judge Lovett, and get away from the idea of selecting the agencies of the carriers—the labor and executive officers and operating men—through political favoritism or political pressure, which none of us could possibly view in any other way than with fear and apprehension; and I suggest, as a possible means to retain private ownership, with absolute public control, with unified service and rates, and with the credit of the railroad company, as it would then be, guaranteed by the Government of the United States, the Government, of course, retaining a lien upon all of the property of this corporation to secure its against any loss that might be incurred by guaranteeing the bonds. I do not care about elaborating on it or saying more, because there are many details which would have to be considered that nobody but practical men like yourself could consider; and therefore I am going to confine what little additional or what few additional questions I shall ask you to a cross-examination of what you said yourself. You did not bring it out or suggest what I have spoken of, but I would like to have the opinion of a practical railroad man like yourself, not simply looking at regulation as to what can be or what can not be done, but what is best for the people of the country and for the transportation companies. In the eleventh note I have here you used an expression which related to labor, where you said, "The arrogant attitude of organized labor adds to the cost of railway expenses." I may not have that, like a good many others, absolutely correct, but you referred to the subject of the increased cost of railway expenses on account of the "arrogant attitude of organized labor." That is substantially correct, is it not?

Mr. KRUTTSCHNITT. I think so.

Mr. SIMS. Now, what do you mean to include, so far as it affects the expenses of railway companies—the "arrogant attitude of organized labor"?

Mr. KRUTTSCHNITT. What I had in mind when I said that—

Mr. SIMS. Yes; elaborate it—what you meant.

Mr. KRUTTSCHNITT (continuing). Was the attitude of railroad labor as evidenced in its absolute contempt of public opinion, contempt of the President of the United States, of Congress, and of the Supreme Court. If we are to believe what we have seen in the papers—and the reports have not been contradicted—the decree of the Supreme Court has been criticized by the leaders of organized labor as suiting them to a certain extent; that part of it did not suit at all and that they would attack it; and hat it would have to be

changed sooner or later. I also had in mind the attitude of organized labor when I and some 50 or 60 other railway executives were in Washington last August, when the threat was made to the President of the United States and to Congress that if certain things were not done within a specified time they would proceed to paralyze all the transportation interests of the United States. Now, with that attitude, which our intimate relations with organized labor has proven to us has existed for a long time but which was made evident to the general public in August last only, we can not get very good service from men who have no respect whatever for properly constituted authority or for the laws of our country; that goes without question. The employer should have some kind of authority over the employees; but the attitude then revealed, I say, shows how very little the employer can have if the laws of the country, the Chief Executive, and the most august tribunal, I suppose, in the world are to be treated as the President, Congress, and the Supreme Court have been treated and talked about by these men since August last.

MR. SIMS. Mr. Kruttschnitt, do you mean to be understood as contending or implying that the attitude which you have described of organized labor has affected the action of Congress or the action of the Supreme Court of the United States?

MR. KRUTTSCHNITT. No, sir; I did not say anything, I think, that could be remotely construed into meaning that.

MR. SIMS. If the attitude of labor has no effect upon the lawmaking body and the law construing and enforcing body, what difference does a vacant, void, and influenceless attitude make?

MR. KRUTTSCHNITT. You asked me what I had in mind when I spoke of the arrogant attitude of organized labor.

MR. SIMS. Yes.

MR. KRUTTSCHNITT. And I was explaining to you.

MR. SIMS. What I am trying to find out is how to limit, as much as possible, the effect of the attitude which you have just described, as to the powers and agencies of regulation.

MR. KRUTTSCHNITT. I thought I had explained that; but I will try again.

MR. SIMS. No; I understand you. I think I do—what your explanation is; but I did not know, without further explanation, but that it would be contended that you were intending to imply that this attitude had already affected Congress and the President of the United States.

MR. KRUTTSCHNITT. No; I do not think, Judge, you could construe anything I said into meaning that.

MR. SIMS. I said that it might be construed or understood that that was your meaning; but I did not think, myself, that you intended for it to go out to the country that, as a fact, the President and Congress were influenced, either through fear or political hopes, in passing the Adamson law. Now, I think this about it—that if either Congress or the President were so influenced it was solely unconsciously, as has been described by Mr. Adamson, the distinguished author of the Adamson bill.

MR. ADAMSON. While you are on the subject, I wish you would ask Mr. Kruttschnitt, who has been able to familiarize himself with it, and able to get around, if the attitude of these heads of the brother-

hoods can have an effect on the railroad train operatives, how far they could make effective their extreme views, if he has any opinion on that subject.

Mr. KRUTTSCHNITT. How far these men could have carried out their threats?

Mr. ADAMSON. Could have influenced their men? In other words, could they prevail upon the bulk of the train operatives to follow them?

Mr. KRUTTSCHNITT. I had reason to believe last August that if the order had been issued to strike there would have been quite a respectable percentage of the more conservative men that would not have responded; at least, the officers of our and of a number of other companies were assured by these men, on their own initiative, that they disapproved of what was being done and did not intend to strike if ordered. You ask my opinion. I should say that these men were honest in expressing what they intended to do, but I doubt very much whether, if a strike had been ordered, with the usual coercion, violence—either open or concealed—whether these men would have had the backbone to stand out alone. I do not know how many would have struck, in other words. I think if the chiefs had issued the order they would have tied up the commerce of the country.

Mr. ADAMSON. You know there are a great many engineers and conductors throughout the country who are very intelligent men, and men of high order, fully equal to any of these heads of the brotherhoods?

Mr. KRUTTSCHNITT. I agree with you most cordially there. I have worked most of my life with these men. In my earlier life I was in a position where I could call them "Bill" and "Jack" and "Tom." Unfortunately, with the growth of systems, the intimate relations between the officers and the men have been largely destroyed, but I believe thoroughly what you say, that if action were left to the free and uncontrolled judgment of the intelligent men, unbiased by either violence or threats of violence, that the order would not have been very generally obeyed.

Mr. ADAMSON. You know that these heads of the brotherhoods have made loud and numerous protests against what they call "involuntary servitude." I just ask you, as an observer of men and events, if to compel a man to quit work is not just as much slavery as to compel him to work?

Mr. KRUTTSCHNITT. I do not think it admits of argument, Mr. Adamson; I do.

Mr. ADAMSON. And on either side of the case, it is a matter of contract; they simply agree to stick together on their side, and on your side they agree to work for you?

Mr. KRUTTSCHNITT. I think that anyone who will cast back his thoughts or his memory to the examination of the brotherhood men by the Interstate Commerce Commission in the investigation held as to the headlight law will come to the conclusion that the involuntary servitude of a man to his union is absolute and vastly greater than any involuntary servitude to his employer.

Mr. ADAMSON. I am much obliged to you, Judge Sims.

Mr. SIMS. That was along the same lines of my examination. It was not a break-in at all.

Mr. ADAMSON. I thought it would be a fit-in.

Mr. SIMS. That is what it really was. I am glad to have had your assistance, Mr. Chairman, because I was on that subject.

Now, then, Mr. Kruttschnitt, do you advise such legislation, both by Congress and the States, or by Congress alone, as will curb this arrogant attitude of organized labor?

Mr. KRUTTSCHNITT. I think anyone who shows a disregard or contempt for the laws, contempt for the opinion of his fellow citizens, by absolutely refusing to submit any question in dispute to arbitration, should be taught a respect for the laws and a respect for his fellow citizens and the public by some regulating authority, and that regulating authority, of course, is the Congress.

Mr. SIMS. What sort of regulation would you suggest, that would cause a man to cease to violate the law? You spoke of his showing his contempt for the law.

Mr. KRUTTSCHNITT. The trouble is, there are penalties prescribed in existing laws, to prevent him from violating them; but we know, from previous experience in strikes, that very little is done in the way of enforcing them. What I propose was read in my memorandum of Monday, in which I proposed compulsory investigation. I do not believe in compulsory arbitration. In other words, I think the two words in "compulsory arbitration," are contradictory.

Mr. SIMS. Neutralizing?

Mr. KRUTTSCHNITT. You can not have such a thing as a compulsory arbitration; in other words, the words do not convey to my mind anything at all; one really offsets the other. But you can have compulsory investigation and all of the facts relating to the dispute laid before the public, and either a strike or a lockout prohibited until the public shall have had time to fully absorb the report of the investigating body. We think if that is done, that the results that have followed in Canada can not fail to follow in the United States. The people are of the same general race, with the same habits and customs, and pretty much the same form of government—there is very little difference. I am a firm believer in the controlling effects of public opinion when it is properly informed.

Mr. SIMS. Then, your object of compulsory investigation is not to inform the railroad owners and operators, for they already know; and not to inform the railway employees, because they already know everything connected with it; but the object of your compulsory investigation is simply, through such a method, to let the public know the contentions of both sides and the facts and arguments to sustain each side? Is not that really the effect of it?

Mr. KRUTTSCHNITT. Yes; but I disagree with you, to a certain extent, in so far as letting the railroad employees know about it. I think that is very important. I do not think, in this last contention, when the strike vote was taken—I will change that and say I know that many of the railroad employees did not know what they were voting for, and whither they were drifting; so I think it is very important for an investigating body to let the mass of the railroad employees also know just what the contentions are, and what is proposed.

Mr. SIMS. Do you think that compulsory investigation is also necessary to let the railway executives and their subordinates know the facts also?

**Mr. KRUTTSCHNITT.** Well, I did not say that it was necessary for them to know, because they are generally informed, and the leaders of labor do not leave them in much doubt as to what they want and what is going to happen if they do not get it. Still I am perfectly willing to admit that no amount of extra information that you could give the railroad executives could possibly hurt them, and it might possibly aid them.

**Mr. SIMS.** Then, the object of your compulsory investigation, and precedent action of other sorts, is not to enable the railway executives and those operating under them to know more about the facts than they already know, and it is not to let at least a portion of the employees know, but only the other portion of them, from which the light has been withheld, either by a lack of opportunity to find out, or by the controlling officers of their organizations keeping them in the darkness? Now, do you think it would be possible for men who are engaged in earning their daily bread by the sweat of their brows, in all sorts of organized-labor service connected with railway operation, to read and know and keep up with and understand the facts that are being laid before such an investigating body, to such an extent that at the end of, say, 30 or 60 or 90 days, or even six months, that they would have such information as would enable them to take action, based upon additional information that came to them from that investigation, throughout this entire country?

**Mr. KRUTTSCHNITT.** I should say, as to most of them, if the report were not too long and too involved, they would know all about it in six hours.

**Mr. SIMS.** And understand it?

**Mr. KRUTTSCHNITT.** And understand it fully in six days.

**Mr. SIMS.** It took the Members of Congress a good deal longer than six hours to understand the demands that were made by labor—I mean the railway trainmen—as to the eight-hour day; and the contention was made on the part of many that Congress acted without sufficient knowledge, without knowing what it was doing; that it was sandbagged; that it was duressed with political possibilities, right in front of the general election.

**Mr. ADAMSON.** I hope Judge Sims does not intend to hold down the standard of intelligence of the rest of the country to that of those who are Members of Congress.

**Mr. SIMS.** But I am thinking of the superior intelligence of these railway trainmen, if within six hours they could sufficiently understand the report of an investigation to act intelligently upon it, when it takes the Members of Congress a number of months.

**Mr. HAMILTON.** Judge Sims does not want to put himself in that category.

**Mr. SIMS.** No; for the sake of the chairman, as well as myself.

**Mr. ADAMSON.** The stockholders and bondholders, in common with the executives, should be informed, as well as the trainmen?

**Mr. KRUTTSCHNITT.** I assert that the failure on the part of a gentleman entirely unfamiliar with these matters to comprehend them at once is no reflection whatever on his intelligence. The trainmen's ability to understand it on a few hours' notice is not surprising, because the trainman is reading about matters with which he is already quite familiar, and all he has to learn is the opinion of some outside

body on matters with which he is already thoroughly acquainted and in which he has been drilled for his entire railroad life. I do say, however, that I think in six days anyone could read and understand such a report.

Mr. SIMS. Six hours, you said.

Mr. KRUTTSCHNITT. In six days, I say. I do not want to be misunderstood about it.

Mr. HAMILTON. I think we clearly understood what you said.

Mr. SIMS. You said they could read the report of an investigating body and understand it in six hours.

Mr. KRUTTSCHNITT. I said a trainman could get a good idea of it in six hours.

Mr. HAMILTON. And that he would certainly know all about it in six days.

Mr. KRUTTSCHNITT. Yes; and I was proceeding to say that anyone of ordinary intelligence who really wanted to know what the questions at issue were could read the report of such an investigating body and understand it, certainly in the period of a week.

Mr. SIMS. To be perfectly frank, Mr. Kruttschnitt, I can not free myself from the conclusion or the surmise—I will not call it a “conclusion”—that one object of the demand for this previous investigation—I mean that the whole object of the demand for this previous investigation is not to inform the parties to the contest; it is not for the information of the parties to the contest; is not for the guidance of the parties to the contest—I mean the immediate parties, the railway trainmen and the railroad executives—but that the real object more than anything else is that the general public may read in advance the report of a committee which investigated the subject, and which makes a statement with reference to the causes——

Mr. KRUTTSCHNITT. And merits——

Mr. SIMS. And merits and demerits of the contention, as made between the parties themselves; and that all legislation that has been proposed to the end that no strike should take place during the period of investigation, and none for 30 days afterwards, was in order that the public might be sufficiently influenced to cause it to bring pressure to bear, either on the railway employees or on the railway executives, or both, so as to avoid the strike in that way——

Senator TOWNSEND. Do you object to that, Mr. Sims?

Mr. SIMS. I am asking a question now; not stating my own opinion or giving any testimony. I say I can not get away from the inference that the chief purpose in having this previous investigation is to influence the public and not simply to enlighten the immediate parties to the controversy. Now, is or is not that the fact, or is not that a proper inference?

Mr. KRUTTSCHNITT. I could answer that either yes or no. It is of the greatest importance to inform the public; but I have already said that I think it would be a good thing to let the rank and file of railroad men, as well as shareholders and others, learn the issues and the merits of a controversy also; in other words, let all the people know, and that embraces everybody. If a man knows part of it already, it will not hurt him to learn a little more—to learn what the opinion of an outside disinterested board is.

Mr. SIMS. You do not advocate compulsory arbitration, and I think you are logical in that. It always appeared to me that saying

"compulsory arbitration" is equivalent to not saying arbitration at all.

Mr. ADAMSON. Judge, what did the Chair understand you to state yesterday about 20 minutes?

Mr. SIMS. I did not know that the Chair was going to come in and aid me so much, for which I thank him. As I said before, I do not feel that any member of this committee ought to be limited to such an extent that he can not even develop one point while he is on it. I think Mr. Kruttschnitt is as competent to give us light upon the subjects about which we are investigating as any man that has been or can be brought before this committee.

Mr. ADAMSON. I beg Judge Sims's pardon; he is the man that said 20 minutes.

Mr. SIMS. And I did not think it would take longer than that. It all depended on the answers. I said I did not think it would take more than 20 minutes to ask the questions; but one question leads to another.

Mr. KRUTTSCHNITT. I should say, Judge, in further answer to that question, that I think the report of a disinterested outside body would be helpful to everyone. I am looking at that from a personal point of view. If I had preconceived notions about some issue with our employees on which I was going to make a stand, and if I knew that an outside impartial body, after looking into it, held different views, it would certainly make me pause and ask myself whether I was quite sure that I was right or not. I think it would so affect every man who found that his preconceived notions differed from the report of an outside investigating body composed of men whose names and records would inspire universal respect and confidence. I say it would affect me, and I think it would affect everyone.

Mr. SIMS. What I was trying to agree with you about when I was interrupted was that I do not understand the railway owners—I mean the stockholders or those representing their interests—to demand compulsory arbitration.

Mr. KRUTTSCHNITT. No. I defined that Monday, when I read my memorandum.

Mr. SIMS. I understand, and I agree with you about it, so far as I am personally concerned. But your contention is that during this period of investigation, and until such time afterwards as Congress may determine, there must be no leaving of the service of the railroads by the employees by agreement with each other or by concerted action, and that the leaving, if so done, shall become a crime and punishable as such. Is that, or not, a correct statement?

Mr. KRUTTSCHNITT. Yes, sir; that is correct.

Mr. SIMS. Now, in its effect upon railway service and railway men, what practical difference is there between forcing them to arbitrate something that they do not want to arbitrate and forcing them to remain in service contrary to their wish and will until an investigation which they have not asked, made by a body which they have not selected, shall pass upon whether or not that particular body or committee or commission agrees with them in the demands they have made? I mean in its effect upon labor itself—would they not regard compulsory arbitration just as favorably as they would—

Mr. KRUTTSCHNITT. I have not suggested compulsory arbitration.

Mr. SIMS. I know you have not. You abandoned that; and now I want to see whether or not you are ready to abandon the other.

Mr. HAMILTON. I should like to call attention to some testimony before our House committee, in which some of the railway employee leaders declared that they were in favor of investigation.

Mr. SIMS. Yes; but not to penalize their men for quitting service by concerted action during the period of investigation.

Mr. KRUTTSCHNITT. Of course, there is very little use of having an investigation if the parties involved conclude to act on their own judgment before the report of the investigation is made.

Mr. SIMS. But I asked you if there was any difference in practical effect from the attitude of labor and from the interests of labor to be compelled to submit to compulsory arbitration of their matters in dispute or being compelled to serve regardless of their demands or what they may determine to be their interests under penal laws during the period that a committee they did not select and had no part in the selecting should pass upon whether or not their demands ought to be granted or not. In other words, is not compulsion in the one instance equivalent in its effect to compulsion in the other, so far as labor is concerned?

Mr. KRUTTSCHNITT. No, sir. In my mind they are entirely different. It is entirely different if some one having power over me should say, "We compel you to submit your difference to arbitrators, and we compel you, under pain of punishment, to abide by the result." That takes away from me liberty.

Mr. SIMS. Oh, no; not to abide by the result but submit to it. That is what I am supposing in my question. You submit to arbitration.

Mr. KRUTTSCHNITT. What is arbitration except an agreement to submit differences to selected persons and to abide by the result? If you are not going to abide by the result, why arbitrate?

Mr. SIMS. They say, absolutely they will not arbitrate questions of personal relationship. That is the very thing we are talking about. You are talking about compulsory arbitration and a personal relationship which they themselves are at liberty to abandon after your arbitration has been made. They can cease to labor after it is made as well as before.

Mr. KRUTTSCHNITT. I am afraid I am a little dense this morning, but I really do not see how I can answer your question differently from the way in which I have answered it several times already. I can not see the bearing of your question about compulsory arbitration when I have never suggested it at all.

Mr. SIMS. I know—

Mr. KRUTTSCHNITT. You asked me, if I understood you right, whether there is any difference between compelling a man to arbitrate and compelling him to keep his relations with his employer in status quo until some outside disinterested parties could investigate. It seems to me the difference is as great as the difference between night and day.

Mr. SIMS. In its effect upon compulsory service of the employee—that is what I mean—that if the arbitration should take three months or six months, he is compelled to stand there and serve as a railroad employee pending this arbitration.

Mr. KRUTTSCHNITT. Then he should never have entered a service in which he assumes an obligation to the public. The shareholders

surrender many of their rights when they undertake to serve the people.

Mr. SIMS. And if you do not have compulsory arbitration and you have compulsory investigation, he is compelled by penal provisions to remain in service during the period of investigation and report. So both involve involuntary servitude, or the permission to quit the service simply as an individual, and not acting in concert.

Mr. KRUTTSCHNITT. Judge, I am not a lawyer, but this simile occurs to me: Every day in contentions between individuals the courts step in and tell the individual, "Halt; do nothing now until we investigate this matter."

Mr. SIMS. They enjoin, in other words?

Mr. KRUTTSCHNITT. Exactly. Now, what is the difference? The remedy by injunction is so common that everybody in the country knows about it. The court simply tells the litigants, "Hold up now and do nothing until we look into this matter," and they submit. It does not seem to be considered any particular hardship. It bears on everyone alike.

Mr. SIMS. Did you ever hear of a court of equity enjoining a criminal court in a prosecution for crime?

Mr. KRUTTSCHNITT. I am afraid I am out of my depth, but as the Supreme Court has affirmed the power of Congress to use emergency remedies in emergencies—a power denied by many able lawyers—I assume, although no lawyer, that it can forbid action pending investigation.

Mr. SIMS. In other words, the injunction applies to civil remedies, and to equitable civil remedies, and involves no imprisonment at all unless the person after the injunction is issued should violate it, and then he only incurs the penalties of contempt of court. But compulsory arbitration is compulsory service during investigation, and is a service enforced and continued by criminal liabilities, criminal penalties, enforced by the State in behalf of the public—assumed, at least—and has no analogy to penalties for a violated injunction, which is a civil remedy, as I see it. But now let us get down to the practical. That is the reason why I said I should like to talk with a gentleman who did not shape or attempt to shape all his answers with reference to legality or illegality, or the possibility of enforcing a law or having it declared void by a court. I believe it is admitted, in round numbers, generally, that the railway trainmen that would have been in that strike if they had all joined in it was about 400,000. Is that correct?

Mr. KRUTTSCHNITT. I really do not know. That was the figure generally used, but I do not know whether it was correct or not.

Mr. SIMS. That is approximate. Now, then, organized labor engaged in railway service, shop men, and others was a number larger even than that, was it not?

Mr. KRUTTSCHNITT. Yes; I should think so.

Mr. SIMS. I saw it stated by parties who were favorable to the railway position about the matter, that there were about 1,800,000 employees in railway service in the same railway companies that were involved.

Mr. KRUTTSCHNITT. If you mean that that is the number of employees less these trainmen, I think that is about right. I think there

are about two and a quarter million railway employees; therefore that total less 400,000 would be about correct.

Mr. SIMS. I want to ask you approximately how many of these employees are organized; I mean those in labor organizations.

Mr. KRUTTSCHNITT. It is difficult—it is impossible for me to answer that question. The two and quarter millions is the number, as I remember, determined by the reports to the commission, as the correct number of railway employees. I do not know how many of them are organized and how many are not.

Mr. SIMS. Now, the arrogant attitude that you referred to had reference largely to the four brotherhoods, as I understand; that is, you had specific reference to their attitude?

Mr. KRUTTSCHNITT. Yes; they are the ones who have been doing the talking.

Mr. SIMS. Yes; and making it known what their attitude was?

Mr. KRUTTSCHNITT. Yes.

Mr. SIMS. In this country, as I understand it, political power is about the highest power that can be exercised, and the political power of the organized labor within railway employments, and the political power of all other organized labor, is a very considerable political power in the United States. You are ready to admit that, are you not, that it is so large as to amount to a very considerable political power? I do not mean partisan power; political power.

Mr. KRUTTSCHNITT. Yes; that can be admitted.

Mr. SIMS. Is not one of the objections to public ownership the political power that the employees would have if they were all appointed through political agencies?

Mr. KRUTTSCHNITT. Yes; that is one great objection.

Mr. SIMS. Now, how is it going to be possible to enforce a criminal statute and a criminal penalty against organized railway trainmen throughout the country through the ordinary machinery of criminal prosecutions? In other words, suppose we had had a law against striking without this previous investigation—a criminal law—that would involve felony penalties, a penitentiary offense, and then suppose that whole 400,000, regardless of this penal law, had gone out. Would it have been practically possible for the United States district courts having jurisdiction to have successfully prosecuted, throughout the entire Union, such a vast number of criminals, who become criminals in the assertion of their own rights, as they believed or claimed to believe, in view of the wide extended personal sympathy and political influence that that vast number of men would have throughout the country? Would it have been practically possible to have enforced such a law by criminal prosecutions if they had to actually be applied? In other words, would not the very magnitude of enforcing the law itself break it down?

Mr. KRUTTSCHNITT. I can not conceive, judge, that 99,600,000 people should admit that any 400,000 should, because of their numbers, political influence, or any other reason, have permission to violate the laws with impunity. If necessary, I think the 99,600,000 should assert the rights of the majority, which rules in this country, and should say, "Our representatives having enacted such and such laws, every person in this country, to the last one of the hundred millions, must obey that law regardless of cost or consequences."

Mr. SIMS. You are speaking now from a theoretical standpoint.

Mr. KRUTTSCHNITT. Well, I do not know what you call a theoretical standpoint.

Mr. HAMILTON. The question was theoretical.

Mr. SIMS. No; it was practical.

Mr. KRUTTSCHNITT. That is my opinion. You ask whether it would be possible to enforce the law against 400,000 people if they chose to ignore it. I say it seems to me that the answer is patent—yes.

Mr. SIMS. I have reference to the 400,000 committing this crime simultaneously and by concerted action; not that some one of the 400,000 should assert his right as an individual.

Mr. KRUTTSCHNITT. I would not modify my answer, whether it was one or 400,000.

Mr. SIMS. Of course, your answer should be as you think. Now, what is practically impossible might just about as well be physically impossible, so far as legislative and administrative questions are concerned. Now, I do not believe, Mr. Kruttschnitt, that if there had been just such a law passed as has been advocated and asked for, making it a crime for these 400,000 men to strike without first serving the railroad for so long a time—that is, three months or six months, whatever you please, pending the investigation and a required time afterwards—that if they had violated it by concerted action, for the reasons given—that they denied the right of Congress to make it a crime for these men in a body to select their employees or to refuse to continue an employment already entered into—I do not believe, nor can I think it is even possible—practically possible—that there could be successful prosecutions throughout the United States of these 400,000 criminals; I mean criminals in the sense of violating this criminal law; that the power they have in politics, which is perhaps no greater than any other 400,000 representative men would have, the sympathy of other labor organizations, the sympathy of the whole people, would be such that the prosecutions would absolutely break down and be absolutely worthless and ineffective, and that there would be a demand made upon Congress, upon every Member of Congress seeking reelection—

Mr. HAMILTON. May I ask a question, Judge?

Mr. SIMS. In a moment. (Continuing:) That he should vote to repeal or modify this law, and that the repeal would promptly follow.

Mr. HAMILTON. I simply wanted to ask you, Judge Sims, whether the railroad history of Australia has any bearing on this question that you are raising.

Mr. SIMS. I do not know enough about it to answer your question. In other words, if it is impracticable, if you can not enforce a law, what is the use of merely irritating the public by passing it?

Mr. HAMILTON. Why not go to a practical illustration rather than indulge in conjecture?

Mr. KRUTTSCHNITT. Law, I think, has been defined as the crystallization of public opinion. If we accept your assumption that the entire public would be in sympathy with 400,000 men if they engaged in breaking the law, I think we then might just as well admit that our whole system of government is a failure, and any number of

people, no matter how small, if they can win over the sympathies of the people generally can do as they please and run the country regardless of the wishes of the majority. And I confess that I can not see the object of imagining these difficulties when our neighbors just across the border have been doing what I am advocating that we should do for a number of years, and through their public officers and through the railways that have been affected by these laws, they say, successfully. Are we not simply alarming ourselves by creating bogey men? Why should it not work on this side of the border as it does on the other side of the border?

Mr. SIMS. Your investigation, which you are contending for, as admitted by yourself, prior to a strike, after the investigation has been made, is to affect public opinion; in other words, to cause as many of the public to take your side of this controversy by reason of this investigation as possible, and thus to affect public opinion.

Mr. KRUTTSCHNITT. Put it a little differently, that the object of my suggestion is to get the public properly informed, so that they will take sides with those who are right.

Mr. SIMS. And believing, of course, that your side is right.

Mr. KRUTTSCHNITT. Not necessarily—with the side that is right. This tribunal will say which side they think is right and what the merits are, and I think it will follow necessarily that when the report is given wide publicity that the public generally will agree with these impartial investigators and will array themselves on the side which is pronounced in the right.

Mr. SIMS. As a matter of course, nobody is going to contend, Mr. Kruttschnitt, that individuals, either singly or by concert of action, have a right to obey or ignore laws just at their sweet will. I am not assuming that ethically or legally they have the right; I am commenting on the impossibility of enforcing such a law where it takes 12 men to agree unanimously that these parties are guilty, and I do not believe myself, with what experience I have had, observing and reading on such matters, that it would be possible to effectually prosecute and convict 400,000 men all over this country who violated this law simultaneously and at the same time, and the statute of limitations running on the offense would be the same. I believe that you could not get juries enough or officers enough; that the means of enforcing the law would break down absolutely and you would very likely, by any attempt to prosecute 400,000 laborers at one time, create such a public sentiment through the efforts they would make and the personal contact they would have with the votes generally as to make it impossible to keep such a law upon the statute books.

Now, why not take a view of this thing which is practical and which is possible? I do not believe that is possible, regardless of whether we have the constitutional right and power to do it or not. Is it wise to undertake such a thing?

Mr. KRUTTSCHNITT. I want to call your attention to the fact that the United States Board of Mediation and Conciliation, in a report dated November 1, 1915, gives the figures as to the success of the measures taken in Canada to prevent strikes. I gave you my opinion, formed from the report of an officer whom I sent to Canada for the purpose of looking into the matter; I gave you the opinion of the present Canadian minister of labor, and I gave you the opinion of the

ex-Canadian minister of labor, given to me orally, and also made public in an address in New York City, and I gave you the report of a commission created by you that has examined this matter and reported on it and say it is successful. Now, if that does not convince you of the practicability of doing something of that sort, I confess I am at the end of my rope; I can not say anything more.

Mr. SIMS. I am confining this largely to the proposed strike of the railway trainmen that was prevented by the passage of the Adamson law from the fact that you, as well as others, have referred continually to the power that organized labor in that instance seemed to have been able to exert somewhere from the attitude that they took. Now, of course, a strike on a short railroad, one perhaps involving only a single State, might not have the same effect all over the United States in prosecuting all those who violated that law in that particular locality that it would have if the prosecution applied to a numerous class of individuals all over the United States, as it would have applied to these 400,000 striking brotherhoods. As I say, suppose there had been a law at the time, and they all had violated it, would it have been possible to successfully prosecute those who violated it by convicting them? There would have been no question about the evidence; there would have been no question whatever of that kind, but I believe it was Burke who said, on the trial of Warren Hastings, that we can not indict a whole nation; neither can we get a public sentiment that would want to send to the jails and prisons of this country 400,000 otherwise law-abiding good citizens at one time, because they contended for the right to quit work by concerted action, regardless of this law requiring them to serve for so long a time pending an investigation.

Mr. HAMILTON. He said that about the electors of Bristol.

Mr. SIMS. Anyhow, it was said by a very able man in England. It might not have been the trial of Warren Hastings.

Mr. HAMILTON. Who do you say said it?

Mr. SIMS. I thought it was Burke.

Mr. HAMILTON. Yes; Edmund Burke.

Mr. SIMS. Why not resort to some other means which can be obtained and which can be enforced and which perhaps will grow in popularity after it is done? I am by this like I am by thinking that you can deprive all the States of the United States of the powers which they are exercising through their commissions simply by showing that it would be an advantage to railroad credit or railroad owners to do such a thing. There are some things, of course, that are more to be considered than profits of railway investors—more than the profits of railway owners or owners of any other kind of property. But, Mr. Kruttschnitt, it does not seem to me that the railway owners of this country at this time have any fears whatever, as far as I can see it, of going to Government ownership or of destructive State regulation.

Now, I will give you the reasons why I think so. If I owned a piece of property and I thought it was going to become less valuable for any reason, I would not go out and advertise that fact; I would try to sell that piece of property, and I would say nothing at all about what may affect adversely its value when I undertook to sell it. But if I think it is continuously going to become less valuable and

less desirable, I will first try to sell it before I make known the reasons why I do so. Now, here is an attempt to seek national legislation, which they have a right to seek, by showing that railway credit, to say the least of it, is breaking down. If I thought that the railway people, the railway owners, the owners of railway stock, all believed it was breaking down, my opinion is that instead of advertising to the country and the world the facts which they allege are causing the breakdown, and for which they are asking legislation, that they would say nothing about the symptoms of the breakdown, but would be trying to sell their property by present methods—I mean by sale of the stocks.

Now, not speaking in a restricted way at all, or in a contemptuous way, but it looks like all railway owners have become all at once an organized body of "calamity howlers." All of them are maintaining that if something is not done along these lines the railroad operations will absolutely break down; that is, the service of the railroads to the country; that they can not possibly finance the railroads of the country; that they can not find a market for their bonds and stocks, and giving the whole public the reasons why they think so, and yet the stock market for these identical securities is not declining as a rule, and the owners of these stocks, who say they are going to be wrecked and robbed, are not selling them in any increasing volume. If you want the country to believe that railroad securities are becoming less valuable all the time—I mean stocks and bonds—the best evidence would be a declining value and an effort of the present owners to dispose of them to other people, even at a loss.

In ordinary, private transactions, buying and selling wheat, corn, cotton, or any other large product that covers a wide area of the country, if you want to stop sales advance the price rapidly; if you want to stop sales reduce the price rapidly. I live in a cotton country and know its effect. If cotton begins to advance rapidly, every man who has got a bale of cotton says, "I will hold on a little longer." If it declines rapidly, he will say, "This is only temporary, and I will hold it a little longer." Therefore, bringing forth indictments of present conditions of railway property and the laws affecting it certainly ought to, if generally believed by the country, have a depressing effect on the values of these securities if the public took these statements as serious and believed that the evils predicted are likely to take place. Now, if you are sure you can bring about the legislation which you seek, which would be remedial according to your judgment, then I could see the wisdom of making this fight just as you are making it; but not believing it is possible to get what you wish to get, it seems to me you are only augmenting the troubles the railroads will eventually have to contend with, and that Congress can only do that which their constituents indorse.

This last statement is not intended as a question, but simply as a suggestion, as I am going to quit. That is my valedictory observation.

The CHAIRMAN. Mr. Hamilton, will you proceed to examine the witness?

Mr. HAMILTON. I really feel I ought not to take the time of the committee. I have only one or two questions.

The CHAIRMAN. You are sustained by precedent as well as theory in your right to examine as long as you please.

Mr. HAMILTON. You spoke, Mr. Kruttschnitt, about the speed of freight trains a while ago, I believe a day ago. How rapidly is the electrification of railroad lines proceeding? Can you give some statement in relation to that?

Mr. KRUTTSCHNITT. I think I can, from memory, give you the principal electrifications. The first extensive one was the electrification of the traffic through the Park Avenue Tunnel, at New York, of the New York Central and the New York, New Haven & Hartford. The New York, New Haven & Hartford first electrified to Stanford, a distance of 32 miles from New York. They have recently extended the electrification to New Haven, which is about 72 or 73 miles from New York. Both of those electrifications were brought about by the necessity of keeping the atmosphere clear at the Park Avenue Tunnel. It was hastened by a very bad accident that preceded the electrification by two or three years, in which a large number of people were killed through the obscuring of a signal by the smoke of a preceding train. That electrification, therefore, was inspired by motives of safety, comfort, and convenience of the passengers only, not from economic motives.

The Norfolk & Western has recently electrified part of its heavy-grade line.

The Chicago, Milwaukee & Puget Sound has electrified their line through the Bitter Root Mountains, where they get electric power generated by water power at very low rates.

The Great Northern Railway, I think, has electrified a short part of its line through their Summit Tunnel, for the same reason the New Haven did, to get rid of the smoke and gases. They had several bad accidents there through which enginemen and firemen were overcome by the gases, and they wanted to get rid of them.

Those, as I remember, are the principal, if not the only, changes of steam into electrotraction in the United States, except the Southern Pacific suburban lines on the east side of San Francisco Bay, serving the San Francisco public and the publics of Berkeley, Alameda, Oakland, and suburban towns east of Oakland. That was formerly a steam service that was converted into electricity on account of the continued objections and complaints of the citizens of the noise made by the escape of the steam locomotives and the smoke.

We have had three or four reports made ourselves on the possible electrification of our Sierra Nevada grade, which is a very heavy grade, between Sacramento and Truckee, over the Sierra Nevada Mountains, and also for our heavy grade over the Siskiyou Mountains, that divide California from Oregon. We had both those investigations made purely from motives of economy. The electric companies had criticized the steam operation and said they could convince us that electricity was better and cheaper, and we told them to go ahead, that we were ready to be convinced, and if they could operate cheaper than we could with coal we would make the change; but they never could convince us.

Mr. HAMILTON. In the present state of the development of electricity, is it considered cheaper to move heavy freight by electricity?

Mr. KRUTTSCHNITT. Heavy freight is being moved by electricity.

Mr. HAMILTON. Then that is in practical operation, as I understand you?

Mr. KRUTTSCHNITT. Yes; but except in abnormal conditions, there is no money in it. It costs you more.

Mr. HAMILTON. Would it be possible to move freight more rapidly with electricity?

Mr. KRUTTSCHNITT. No; it is a question of the amount of power you use. You can move a freight train just as fast as you like by either steam or electricity.

Mr. HAMILTON. Then there would be no advantage as to the rapid movement of freight in the electrification, in your judgment?

Mr. KRUTTSCHNITT. No; unless the conditions were such that the cost of your electric motive power and cost of operation and the interest on the additional fixed plant were less than the interest on that part of your steam plant that you could discard by using electricity and the cost of the power developed by the consumption of coal or oil and cost of operation. That really, to continue the answer, was the reason we did not electrify on the Sierra Nevada. We considered the cost of moving the traffic with power by burning coal in the locomotive fire box, as contrasted with the cost—that is, the interest on the hydroelectric development, using some streams in the mountains, long transmission lines, and the cost of the electric locomotives, crediting the project with the cost of the steam locomotives released, which we could use elsewhere. Now, there was no money, as I remember it, but the report is four or five years old, but it figured out about this way: We could save about \$400,000 a year on our coal bills, but our bill for interest and maintenance of the electric property, which would be superadded to everything we had, amounted to much more than \$400,000, and therefore the conclusion was easy that the time was not ripe to change to electric power.

Mr. HAMILTON. I understood that some witnesses were to be presented who had expert knowledge of the subject of Government ownership, and I think, Mr. Chairman, out of regard for the other members of the committee, I will not ask any further questions at this time.

Mr. ADAMSON. You need not limit yourself. Go on and inquire.

Mr. HAMILTON. I think I will ask no further questions.

Mr. ADAMSON. Mr. Doremus, will you examine the witness?

Mr. DOREMUS. I only want to ask one or two questions of the witness. You give us as your opinion, and the opinion that I think is shared in by a great many people, that the railroads, under private ownership, are largely broken down. Do you regard the great contributing cause for that condition to the fact that the railroads have numerous masters, represented by railroad commissions and public-utility commissions in the various States, instead of one controlling authority?

Mr. KRUTTSCHNITT. That is one of the potent causes, the numerous orders, sometimes conflicting, issued by these numerous masters. The effects of these orders are very far-reaching and cumulative, and when there is an order that affects our company, we will say, to the extent of \$500,000 or \$600,000 a year, and another one \$200,000 a year, and you go on through the list and finally find that the resultant of all these orders is perhaps several million dollars a year, in the end it becomes very burdensome.

Mr. DOREMUS. Do you consider it the principal contributing cause to the present condition of the roads?

Mr. KRUTTSCHNITT. I do. I consider that and the rapid rises in the cost of labor and materials the principal causes. The railroads have no means of offsetting the rapid rises in the cost of the materials and the cost of wages except by seeking to operate their properties more efficiently. They can not raise the price of the commodity—transportation—that they manufacture, as manufacturers of all other commodities do.

Mr. DOREMUS. To what extent, if any, do you think the financial mismanagement of American railroads is responsible for the present conditions?

Mr. KRUTTSCHNITT. That I touched on before you came to the committee. I will repeat it briefly; that there has been dishonest management, I am sorry to say, in the railroad business, and that has affected to a certain extent, but I do not think to any very great extent, the confidence of investors in their securities. At the end of 1914 there were 69 roads in the hands of receivers; 69 roads with bonds to the amount of about one thousand eight hundred millions of dollars; were not paying any interest on their bonds at all, and, of course, nothing on their stock; and there was a large number of other roads representing four thousand or forty-five hundred millions of dollars of stock that were not paying any dividends. Now, the proportion of roads that went into receiverships through dishonesty was about 7 or 8 per cent of the total. In the same period, covering four years, the report of the Comptroller of the Currency shows that 46 national banks went into the hands of receivers, and 23 of those, or 50 per cent of the total, failed through dishonesty. In other words, the proportion for the national banks was about six times as great as for the railroads. These dishonest failures have not affected the confidence of the people in national banks, or in their securities—they keep on buying. They appreciate that in all businesses you have black sheep, but if the business in the main is well managed they charge the existence of those black sheep to the weakness of human nature, and they go on about their business and invest in stocks; and so they do with the railroads.

Mr. DOREMUS. Are you through?

Mr. KRUTTSCHNITT. Yes.

Mr. DOREMUS. You were speaking particularly of dishonest management of railroads. I presume that it is as easy to wreck a railroad by mismanagement as by what you term dishonest management? That would be true, would it not?

Mr. KRUTTSCHNITT. Yes; except one would be unintentional and the other intentional.

Mr. DOREMUS. Yes; but the effect might be the same, whether brought about by dishonest management or mismanagement?

Mr. KRUTTSCHNITT. Yes.

Mr. DOREMUS. Are you familiar with the recent history of the Hartford & New Haven Railroad?

Mr. KRUTTSCHNITT. Not except as a general reader would be familiar with it.

Mr. DOREMUS. Could you suggest a remedy in the way of Federal legislation that would prevent a recurrence of the experience of the Hartford & New Haven?

Mr. KRUTTSCHNITT. I think you have that to a considerable extent now. The financial operations as well as the physical operations of railroad properties are inspected and examined by the Interstate Commerce Commission most minutely, and the carriers are required to report to the commission annually, in the greatest detail, everything that has been done during the year. The control would be absolute if the issuance of all securities were placed under the Interstate Commerce Commission.

Mr. ADAMSON. Has not that been true for a long time, under section 20 of the commerce act?

Mr. KRUTTSCHNITT. The section may be the same, but the inspection has become, year by year, closer and closer.

Mr. ADAMSON. That is, the section has been better complied with?

Mr. KRUTTSCHNITT. Yes. I think I know what Mr. Doremus refers to in the New York, New Haven & Hartford. As I say, in a general way, I know that there was considerable excitement on account of a revelation of their improvident investments, that ran back 10 or 12 or 15 years. Those investments antedated the time when this very close inspection of accounts was made by the Interstate Commerce Commission. They were brought to light in the last few years.

Mr. DOREMUS. Do I understand you to mean that we already have the legal machinery which, if it had been put in motion, would have averted the misfortune that overtook the New York, New Haven & Hartford?

Mr. KRUTTSCHNITT. I think if they had been put in motion at the time those expenditures were being made, which, as I say, in a general way, I trace back 10 or 15 years ago, it would not have occurred.

Mr. THOM. May I make a suggestion there, Mr. Doremus?

Mr. DOREMUS. Yes; certainly.

Mr. THOM. My understanding is that a part of the general report is that there shall be a power conferred by Congress on the Interstate Commerce Commission to supervise the issuance of securities.

Mr. DOREMUS. That is what I wanted to draw out from the witness—whether he thought that would have a corrective effect?

Mr. KRUTTSCHNITT. That would increase, very largely, the power of the commission to stop just such abuses. Its authority would be complete and absolute.

Mr. DOREMUS. Your railroad, the Southern Pacific, is a dividend producer, is it not?

Mr. KRUTTSCHNITT. Yes.

Mr. DOREMUS. What dividend does that road pay now?

Mr. KRUTTSCHNITT. Six per cent.

Mr. DOREMUS. That is, on the common stock?

Mr. KRUTTSCHNITT. It has no stock but common.

Mr. DOREMUS. All common: no preferred?

Mr. KRUTTSCHNITT. No.

Mr. DOREMUS. How long has it been paying 6 per cent?

Mr. KRUTTSCHNITT. Since about 1907.

Mr. DOREMUS. What dividends did the road pay previous to that time?

Mr. KRUTTSCHNITT. I will have to make a mental computation, which may not be accurate, but will be reasonably so. In 1905, 1 per cent; in 1906 it was 2.8 per cent; then after that the dividends seem to have been reasonably regular at 6 per cent.

Mr. DOREMUS. You have never paid, then, more than 6 per cent?

Mr. KRUTTSCHNITT. No.

Mr. DOREMUS. And that began in 1907?

Mr. KRUTTSCHNITT. Yes; and from the incorporation of the company, in December, 1885, up to 1905 no dividends at all were paid, though the surplus ran from seven-tenths of 1 per cent up to 3 per cent in those years. In other words, that surplus was earned, but it was not divided up and given to the shareholders.

Mr. DOREMUS. Would it be fair to assume, from what you have said, that the multiplicity of regulation which has grown up in recent years has not seriously affected the welfare of your shareholders?

Mr. KRUTTSCHNITT. You mean in that from 1907 to date they have paid 6 per cent?

Mr. DOREMUS. And that previous to that time you paid practically no dividends.

Mr. KRUTTSCHNITT. The property was being developed at that time; development was going on.

Mr. DOREMUS. And previous to 1907 your earnings were put back into the property, and that accounts for the failure to pay dividends?

Mr. KRUTTSCHNITT. I just said that whatever we earned, which varied from seven-tenths of 1 per cent to a little over 3 per cent, was put back into the property; but, continuing my answer to your question, I would say that the fact of paying a 6 per cent dividend and borrowing money, which was put into the property, at rates of sometimes 6 per cent and at times 5 per cent or over 5 per cent, is not an evidence of any very great prosperity; not evidence of such prosperity as would make the securities of the company very attractive to investors, when other concerns were doing so much better.

Mr. DOREMUS. What is the market value of the stock of the Southern Pacific now?

Mr. KRUTTSCHNITT. From 93 to 95. You will observe that that is very low for a 6 per cent stock.

Mr. DOREMUS. Yes. I suppose it has been much higher than that, has it not?

Mr. KRUTTSCHNITT. Yes; I think it went up at one time to 125 or 130.

Mr. DOREMUS. Your stock purchased on the market at 93—did you say—to 95?

Mr. KRUTTSCHNITT. Yes. I think the last I noticed—I looked in this morning's paper, and my recollection is it was about 95.

Mr. DOREMUS. That would yield a net return to an investor of something above 6 per cent, would it not?

Mr. KRUTTSCHNITT. A little over 6.

Mr. DOREMUS. You were telling us yesterday the extraordinary increase in the cost of coal to your company. Have you made any investigation of the causes of the extremely high price of coal?

Mr. KRUTTSCHNITT. I have not.

Mr. DOREMUS. Can you suggest any remedy to the committee that would have a tendency to reduce the price that railroads have to pay for coal?

Mr. KRUTTSCHNITT. I do not know of any.

Mr. DOREMUS. Are you in favor of national incorporation of railroads?

Mr. KRUTTSCHNITT. National incorporation of railways? You mean Government ownership?

Mr. DOREMUS. No; I mean the national incorporation as distinguished from incorporation under State charters—Federal incorporation.

Mr. KRUTTSCHNITT. Yes. That is the proposition that we are discussing here; that is, that the railroads be required to take out Federal charters.

Mr. DOREMUS. I was not here. I wanted to know as to whether you believed in that. I do not suppose you have given any consideration to the question of how—

Mr. THOM. I would like to have Mr. Kruttschnitt get that answer in. Mr. Doremus said he was not clear as to your attitude.

Mr. DOREMUS. I am very clear now that he is in favor of it.

Mr. KRUTTSCHNITT. Yes; I am in favor of the roads getting Federal incorporation.

Mr. DOREMUS. I do not suppose you have given any consideration to how, in the event we nationalize the railroads through Federal incorporation, the property of the old corporations would be transferred to the new corporations?

Mr. KRUTTSCHNITT. The question of details—indeed, the entire question as it was first broached in our deliberations and in committees—was submitted to counsel, and he went over the proposed Federal incorporation and advised the directors that it was practical and, he thought, desirable; and I can not answer you many, if any, questions about the details, because I am relying on his judgment.

Mr. DOREMUS. That is more of a legal question, anyway.

Mr. KRUTTSCHNITT. Yes, it is; and I have acted on the judgment of counsel.

Mr. DOREMUS. I think that is all.

Mr. ADAMSON. Mr. Kruttschnitt, in speaking of the electrification of roads, the force is not developed sufficiently as yet—the electrical energy of the country—to enable you to secure that energy cheaply enough to operate the railroads on an extensive scale by electricity, is it?

Mr. KRUTTSCHNITT. We have not yet found cheap enough power, Mr. Chairman, to replace the steam.

Mr. ADAMSON. At present does the equipment for electrification cost as much as the current itself—your connecting lines and your other equipment—transmission lines?

Mr. KRUTTSCHNITT. The equipment is very costly. I am going to give you the best information I have got. I have a fairly accurate memory, and my recollection is that for the electrification of our Sierra Nevada grade, a distance of about 120 miles, the capital expenditure necessary to put in the generating plants near the water power that we proposed to use, the cost of the transmission lines to the line of the railroad, and the cost of the electric locomotives, and the cost of the transmission lines along the railroad, ran up to eight or nine millions of dollars. That was some years ago. The cost would be very much greater now. That was one side of the problem. The additional cost, then, would be the capital cost, or the interest charge on eight million or nine million dollars, plus the operating cost of the power house and locomotives, and the repairs

of transmission lines. On the other side of the account was the cost of the coal burned in the locomotives to do the work that the electric line was to do, as well as their operating costs, and a credit of the value of the locomotives that would be displaced, because they were good locomotives, and we are buying locomotives every year, and we could simply transfer them to another part of the line and not count them a total loss.

Now, the difference between the possible economies from using the electric system and the actual cost of the steam system as we are using it was a difference of \$300,000 or \$400,000. In other words, all we could accomplish by abolishing the steam system was the saving of the coal bill; and the coal bill was between \$300,000 and \$400,000; but the interest bill and the cost of running the electric machinery ran up to very much more than that; it was \$600,000 to \$800,000. There was a difference of about \$300,000 between the two at that time.

Mr. ADAMSON. I heard a railroad man say that it would cost as much to erect this construction, including the necessary transmission lines, as it did to build a railroad. I suppose that is exaggerated?

Mr. KRUTTSCHNITT. No, it is not; it is substantially correct. In other words, the officers of our electric properties in California—and I think we have the largest mileage of electric properties of any railroad in the United States—have often stated to me, as rough estimates, when I have asked them what it would cost to go to this place or that, just what you did—that you can count very closely on the overhead costing just as much as the railroad itself.

Mr. ADAMSON. Then it would be most expensive and the longest postponed on the longest stretches of road?

Mr. KRUTTSCHNITT. I do not think you can get any general answer to that. It would depend on the circumstances. On a long stretch of road you might get the power so low that you could sweep aside all other objections.

Mr. ADAMSON. That is what I was going to ask you—if the abundant opportunities in this country for the development of hydro-electricity are permitted to be developed and the cost of operating by electricity—I do not mean lighting little towns or such trifling things—but if the generation of hydroelectrical power becomes so abundant as to reduce the cost from something like \$28 per horsepower per annum down to \$7 or \$8, which is what it costs when used for manufacturing purposes, would not that greatly facilitate the electrification of railroads?

Mr. KRUTTSCHNITT. Unquestionably.

Mr. HAMILTON. Suppose, having water power and the plant and all the facilities for the electrification of 120 miles, you had desired to extend the line of electrification from 120 to 500 miles. Could you have used the same plant and the same power house and all that?

Mr. KRUTTSCHNITT. No. The power was not available in the stream.

Mr. HAMILTON. Oh, I see. Precisely. But suppose you had a stream where you could get sufficient power, would it add very materially to the expense to extend the electrification, we will say, to 500 miles, simply by way of illustration?

Mr. KRUTTSCHNITT. Taking the rule I have just given, the extension of the transmission lines along existing railroad lines would about equal the cost of the railroad line in place.

Mr. HAMILTON. That is, just simply extending the line?

Mr. KRUTTSCHNITT. That is, in ordinary country. I want to explain that a little. That is true in an ordinary country, where, say, the expense of the ordinary line would be \$25,000 to \$30,000 a mile; in other words, the overhead would cost about that; but on a mountain grade, such as ours over the Sierras—I have never had it computed—but I should say the cost of that line would run up to probably \$150,000 or \$175,000 a mile on account of the excessively heavy rockwork, snowsheds, and tunneling; but it would cost about as much as I told you on an ordinary line; in other words, probably \$25,000 or \$30,000 a mile. That cost runs up, you see, pretty rapidly with distance, and then with this long transmission you have got to take into account your waste factors; there are leaks and losses in transmission by which you do not get all the power at the end of 500 miles that you put in at the beginning.

Mr. ADAMSON. Now, while you may have a long stretch of road—I suppose you have stretches on your road over a thousand miles long without coming in contact with any water at all?

Mr. KRUTTSCHNITT. Yes; more than that.

Mr. ADAMSON. Of course, if you derived all your power from one source, it would be a long transmission; but while it may not be true of your road, probably there are water powers collaterally that may—

Mr. KRUTTSCHNITT. I can give you an illustration there, because we have gone into this thing so thoroughly that we can talk from almost any angle. Mr. Harriman was a great believer in water power and was constantly after me to do something to electrify our lines. Parties owning water powers on the Snake River in Idaho, north of our Central Pacific line and substantially parallel with it, told Mr. Harriman that they could run the Central Pacific a great deal cheaper than we were running it. I did not believe it, but I have a stereotyped course to take in such cases—to tell the applicant, "Prove it." So when they came with this claim I said: "There is the Central Pacific Railroad; I will turn you loose on it; you will have all the information you want; I will detail men to give you the train mileage, the locomotive mileage, the grades, the distances, the density of traffic, everything you want, and all I ask you is, when you get that, give me the report as to what you can do, what you can run the road for." And they proposed to do exactly what you say; that is, they had sources of power at four or five different points which they proposed to drop down—

Mr. ADAMSON. To feed the line?

Mr. KRUTTSCHNITT (continuing). Into the line at different points. The only thing I did not give them was the cost of running the Central Pacific by steam. I did not want their report to be affected by knowledge of what we were doing. But when their report came in it meant a very large increase in operation to the Central Pacific by electric power as against coal. I simply said to them, "You have not made good. You have said to the president of the road that you could operate the road cheaper than we could with coal. Now, we

have turned you loose and given you all the information you wanted, and you come in with a report that shows that you can not do it. There is no use in taking up any more time with you. If you can modify this, and go over this report at some future time, come and see us again; but we are not ready to act on this report." And the truth is that we have had two investigations of the Siskiyou grade made, and three of the Sierra Nevada, by owners of electric power and by manufacturers of electric machinery who talked at random just as these other parties talked—that "you people do not know what you are about; we can save a vast sum of money for you if you will operate your road electrically." And in every one of those cases we said to them, "Gentlemen, go ahead; if we do not know how to do this, show us." In every case the report came in that it would take very much more than we were spending with coal.

Mr. ADAMSON. Is the Snake River a large stream?

Mr. KRUTTSCHNITT. Very.

Mr. ADAMSON. How much horsepower could you develop by a dam?

Mr. KRUTTSCHNITT. Well, almost unlimited. The Snake River is the principal fork of the Columbia, and up in the country where they propose to develop it is a stream, I should say, probably a thousand or twelve hundred feet wide and 8 to 15 feet deep.

Mr. ADAMSON. Is it a flashy stream or does the current run uniform through the season?

Mr. KRUTTSCHNITT. No; it varies according to the season.

Mr. ADAMSON. Now, there may be, of course, different conditions applicable to your road which might not make it economical for you to adopt it at the present prices of electricity, but there are sections of the country where different conditions exist as to topography and the length of lines and also the production of water power. For instance, there are shoals in the southern and southwestern country on navigable streams where there is no difficulty in producing water power at from \$7 to \$10 per kilowatt per year. I know I have heard offers of 1 mill per kilowatt hour. Of course, that would fill with consternation the little power companies; but suppose they were permitted to allow private capital to construct the dams on those shoals and generate power at that price, are there not railroads which could then economically substitute that for coal?

Mr. KRUTTSCHNITT. I would say right here, Mr. Chairman, that if we could find any power company that would deliver us power at a mill per kilowatt hour, I do not think it would take much more than an hour to make up our minds to electrify our Sierra Nevada grade.

Mr. ADAMSON. I know of half a dozen streams on which there are shoals capable of producing vast quantities of power, and those shoals break the continuity of hundreds of miles of navigation. Private capital has been anxious to build those dams, if permitted, on liberal terms for the development of the country by building factories, running railroads, and other uses of electricity, and I have been assured by those who inspected those propositions of those low prices at which they are capable of producing electricity.

Mr. KRUTTSCHNITT. That is phenomenally low.

Mr. ADAMSON. Yes; well, it has to be that low for manufacturing some commodities. I know in Norway, where they have fine water-

powers, and in Germany they say they have to have it \$6 and \$7 a kilowatt-year for the new process of steel making and other things. We have got just as good water power, fifty or sixty thousand horsepower, and if those who are opposed to the development of these navigable streams could be persuaded to accord liberal terms to private capital that wanted to build those dams, I have demonstrated by investigation among many of them that the capital would be forthcoming, and that those low prices—probably not exactly as low, but approximately—would result. Now, I understand from you that if anything approximate that price could be attained a good many railroads in the country would electrify their lines?

Mr. KRUTTSCHNITT. I can only say as to ours that I think every one of the electric projects I have mentioned would go in at once, if we could get power at such a rate as that.

Mr. ADAMSON. But your system is more favorably situated for it than many others?

Mr. KRUTTSCHNITT. Well, I do not know. There are a good many parts of our system that are very unfavorably situated to get power, because there are no running streams near by.

Mr. HAMILTON. In view of what you have said—I beg Mr. Doremus's pardon.

Mr. DOREMUS. I will yield to the gentleman.

Mr. HAMILTON. In view of what you have said, what are the reasons, in your judgment, that appeal to corporations to construct electric lines in the first instance? There are a large number of electric lines doing business in competition with steam lines.

Mr. KRUTTSCHNITT. You mean the electric interurban lines?

Mr. HAMILTON. Well, more than that. For illustration, I recall an electric line running from the city of St. Joseph, on Lake Michigan, south to Indianapolis. I think it is a complete line for that whole distance. It is doing business, of course, in competition with steam railways. In view of what you have said, what are the reasons which induce that construction? They are apparently doing a profitable business; and I may add that within the last five years an electric line has been constructed in the State of Michigan extending between Grand Rapids and Kalamazoo, doing business in competition with steam railways, and apparently prosperous. I should like to have you state what, in your judgment, are the reasons which appeal to these corporations to construct these roads in competition with steam railways.

Mr. KRUTTSCHNITT. There are several. I think I can give you enough to show you that they are controlling reasons.

In the first place, the standard of construction of the electric road is much lighter and below that of the steam road. The rails are lighter; the ballasting is not as heavy; the equipment is much lighter and is much cheaper. An electric car complete with motors to operate on an ordinary electric road costs about eight or nine thousand dollars. A locomotive and one coach to operate on a steam road costs, for the locomotive, at present prices, about \$25,000 and the coach about \$10,000, or \$35,000 in all. There are expenses for equipment 4 to 1 in favor of the electric road.

Second, and perhaps the most potent factor is the free right of way. The counties and towns allow these roads to take part of the

public roads, and they build generally on the edge of the public roads. The right of way costs them nothing. The steam road builds across private property, and its right of way is one of its most expensive elements.

The wages accepted by the electric-road employees are far smaller than those that have to be paid by the steam road. The electric car has two employees, a motorman and a conductor. The smallest steam train we can run—a locomotive and one coach—has four employees, an engineer, a fireman, a conductor, and one brakeman. The electric stations are few and inexpensive in comparison with steam lines, and the terminals are far less expensive.

As to cost of power, that will vary in different places, but electric roads are frequently run in connection with power plants; that is to say, the company that runs the electric road also sells power to the public, and therein is a great advantage. The electric road puts up a plant that is sufficient to run its property. It uses that plant principally in the daytime and has no use for it at night. But if it can find a profitable use for it at night its fixed overhead charges are very, very much reduced. Now, it finds that night use by selling its power for illuminating.

Those, briefly, are the reasons why the average interurban road can, to use a vulgar expression, "do up" the steam road.

Mr. HAMILTON. Can these electric roads, equipped as you state, handle bulk freight, heavy freight?

Mr. KRUTTSCHITT. Yes, sir.

Mr. HAMILTON. As well as the steam road?

Mr. KRUTTSCHITT. Yes, sir.

Mr. ADAMSON. They can pull freight cars as trailers, can they not?

Mr. KRUTTSCHITT. I will give you an illustration. We have our Pacific Electric Railroad in southern California, which is a system of about 900 miles of line. That runs from Los Angeles north and south, and it was built for the very reasons that you give, for feeders to the steam lines. We were running steam lines south of Los Angeles to gather up the people and bring them into Los Angeles to feed the through trains, and we concluded it was much cheaper to do it electrically. Now, the Pacific Electric handles also a great deal of freight and handles it just as well as the steam line does.

Mr. HAMILTON. Of course they run much more frequently?

Mr. KRUTTSCHITT. They run the passenger trains much more frequently; and then they have spurs to the orange orchards. They pick up the orange cars, accumulating a train of 30 or 40 cars, and the train is brought in to a central point, and the orange cars are switched to other trains that go at once east and north.

Mr. HAMILTON. Then they handle freight and passengers very satisfactorily—

Mr. KRUTTSCHITT. They do.

Mr. HAMILTON. And economically, evidently?

Mr. KRUTTSCHITT. There again comes in the question of development. The Pacific Electric has been "done up" by the jitney. The State has improved the roads, and the automobile has taken the passenger traffic, the short-line passenger traffic, away from the electric road, and we have had to spend a great deal of money putting in spur tracks and sidetracks to make good the loss in passenger business by gains in freight business.

Mr. ESCH. Mr. Chairman, may I ask a question?

Mr. ADAMSON. I yield to the gentleman from Wisconsin.

Mr. HAMILTON. Before Mr. Esch starts I should like to ask just one more electric question. I wanted to call attention to this fact: There is an electric line running out of Detroit, and it runs as far down, I think, as the city of Kalamazoo, and all the way it parallels the Michigan Central, running very close to the Michigan Central lines, or what is known now as the New York Central. It is doing good business, apparently, in competition with the Michigan Central line. At the same time the business of the Michigan Central does not seem to have fallen off. Both lines seem to be prosperous; and in many of these instances—two of the instances that I have cited to you—these roads do not run along highways, but have had to purchase their right of way across the country, as a steam road would have to do. I simply wanted to make that suggestion as having some bearing on what you had already stated.

Mr. KRUTTSCHNITT. Well, roads are built that way. This road of ours that I speak of has been built on private right of way almost the entire distance. We did not want to rely on the pleasure of communities to put our tracks in the road and perhaps be hampered by speed regulations. We would rather have them on private right of way, and the right of way fenced in, so that we could give very fast service.

Mr. HAMILTON. I only spoke of it as suggesting a possible means of perhaps solving in part the problem of quick transportation of freight which has been raised here.

Mr. KRUTTSCHNITT. We have already done that to an extent greater than any other road, I think, in the United States.

Mr. ADAMSON. Before you begin your examination would you let me ask him one more question?

Mr. ESCH. Yes. Mr. Doremus wants to ask another, too.

Mr. ADAMSON. I was asking you about these electric lines—that is, electrically propelled trains—and you made a statement about the advantage in getting free right of way. I wish you would emphasize and specify approximately what advantage that would be in the construction of a line—that the right of way and terminal facilities were donated to the road.

Mr. KRUTTSCHNITT. Of course, where the right of way is given, particularly in the case I had in mind in southern California, where the lines run through orange orchards and walnut orchards and the cost is very high, that advantage is very great.

Mr. ADAMSON. Then, if a city and county should grant to one of these electric roads the right to run in any street or highway in the city or county, it would constitute a very great inducement, ordinarily, for the construction of that road?

Mr. KRUTTSCHNITT. Yes, sir.

Senator TOWNSEND. Did I understand you to assent to that proposition, Mr. Kruttschnitt, that that would be an inducement, rather than having your own right of way, not subject to any accident that might occur?

Mr. KRUTTSCHNITT. I say that to the ordinary road that would be an inducement, the saving of that large expense; but there are electric roads and electric roads. I said in respect to ours that we did

not consider that much of an inducement, because we had bought private right of way to be relieved of the chance of accidents or the passage of laws that would require us not to exceed a certain speed.

SENATOR TOWNSEND. The very road to which Mr. Hamilton has referred, running from Detroit to Kalamazoo, practically across the State, had the right of way offered to it in many instances, but it preferred to purchase it, and did purchase it, so it is running on its own right of way. The argument that was presented to use at the time was that it was much cheaper in the end, everything considered, and it was safer and cheaper to the railroad to own such right of way.

MR. KRUTTSCHNITT. We have reached that conclusion, because our railroad lines have been built that way.

There is a map of the lines I am referring to, Mr. Chairman, which may be of possible interest to you.

MR. DOREMUS. I understood you to say yesterday that you thought the railroads should have the legal privilege, when their volume of business decreases, to increase the rates. Did I understand you correctly?

MR. KRUTTSCHNITT. I did not put it just that way—"should have the legal privilege"—but that when the volume does decrease and the revenues are not sufficient to pay operating expenses, fixed charges, and a fair return on the capital, there should be a prompt answer to the plea of the carriers to increase rates.

MR. DOREMUS. That was the substance. It would amount to a legal privilege to raise the rates when the volume of business decreased, subject, of course, to the approval of the Interstate Commerce Commission. Upon what ground would you justify a privilege of that kind: that it would stabilize the credit of the road?

MR. KRUTTSCHNITT. It would stabilize the credit of a road and would keep it out of bankruptcy. I said that if the volume of business that is being carried now by our road and many others, at the rates prevailing and with the expenses that have increased since even the opening of the European war, should decrease, many of these roads would go into bankruptcy, because the gross revenue would not be sufficient.

MR. DOREMUS. What I am getting at is this: Would not that throw around the railroads of the country a privilege that is not enjoyed by other kinds of business?

MR. KRUTTSCHNITT. The railroads do not now enjoy the privilege enjoyed by other kinds of business of being able to sell their product—transportation—at the market rates based on cost of production. They are restricted. On the other hand, they are compelled, in order to keep going, to pay the market rates for everything they need, wages included, at whatever prices prevail. Now, those two influences are directly antagonistic, and if you hold them to the influence of one and relieve them from the benefit of the influence of the other I do not see how bankruptcy can be avoided.

MR. DOREMUS. Do you not think that would constitute of the railroads of the country a peculiarly favored class? For instance, in ordinary mercantile business a decrease in the volume of trade, I think, is almost uniformly coincident with falling prices; and viewing it from that standpoint would it not constitute of the railroads a peculiarly favored class?

Mr. KRUTTSCHNITT. I think not. The railroads now are in a peculiarly handicapped class, in that their revenues and their sources of revenues are absolutely controlled by regulating bodies, and no one controls for them the prices of materials that they have to buy and of labor. In every other industry except railroading increasing costs are offset by increasing profits. If the manufacturer, whatever his line, has to pay higher costs for his material and for his labor, he recoups himself by charging more for his output. But law and regulation says to the railroad, "It is immaterial to us what you pay for the materials necessary in your business; it is immaterial to us what you pay for labor; but we regulate your revenues and they stay fixed." And it is the only industry in which that course is taken. Our suggestion is not to favor railroads, but to accord them the benefits of economic laws that govern prices in all other manufacturing enterprises.

Mr. ADAMSON. Is that strictly accurate? Does not section 20 of the commerce act require the commission to keep itself advised of all these elements of expense, as well as all other features of operation; and is not that for the sole purpose of enabling them to fix proper regulations?

Mr. KRUTTSCHNITT. Quite true. It may provide that they shall keep themselves informed; but I do not remember that the act anywhere requires them to act on that information.

Mr. ADAMSON. What other purpose could there be for the information except to discharge their duty? And it may be that individual commissioners may not always agree with you as to what action they ought to take and for what reasons they ought to minimize the value attached to any one of these features. The law remains that they can and should consider them.

Mr. KRUTTSCHNITT. That is all quite true; but I have tried to show you by charts and by my oral testimony that as a resultant of rise of wages, prices, and costs of materials the railroads are in a position to-day of being paid in a debased currency—a dollar that is worth only 45 cents.

Mr. ADAMSON. That is another proposition. I have stated to you gentlemen frequently that if you would base your claim for increased rates on the fact that money has come to be cheaper than anything else in the world, and will not buy as much, you would have a much more plausible case for your demand.

Mr. KRUTTSCHNITT. Well, I am sorry to know that I have failed. I have tried with great earnestness, and with all the ability I possess, to make plain that the purchasing value of our railroad dollar had depreciated to the extent that it was worth only 45 cents instead of a hundred cents, and I have devoted a large part of my time for the past month or so in trying to get up argument to convince you of that.

Mr. ADAMSON. But we are not the people to be convinced of that. My position is that you already have a law, and that your statement was inaccurate when you said that the law prevents you from making an adequate return, because the law is that you shall have a reasonable and just rate, and the law prescribes what these commissioners shall consider and keep themselves informed on. And they should—whether the individuals do it or not is another question—but

they should consider and keep themselves informed on all these questions and consider every one of them in seeing that you have a reasonable and just rate.

Mr. KRUTTSCHNITT. Mr. Chairman, we are here before you a committee of doctors. We are telling you of our ailments and what we are suffering from.

Mr. ADAMSON. You will only have to ask us to recommend to Congress, you know; and I am telling you what already exists, where it seems to me you ought to get redress.

Mr. KRUTTSCHNITT. Well, there is an old adage, you know, about taking a horse to water.

Mr. ADAMSON. You can probably do just as a railroad official said to our committee in 1904, when the railroad officials were stubbornly combating the theory that the Government had any right to regulate them at all. I said, "What if we overrule you, and Congress does decide that it will make your rates; what will you do?" They said, "We will try to get another." Now, if this committee is not a good one, you can get a better one; but the law, it seems to me, is ample to provide you just and reasonable rates.

Mr. SIMS. The low purchasing value of your dollar applies to labor just as well as it does to material; in other words, the laborer has to pay more out of his wages than he did before?

Mr. KRUTTSCHNITT. Yes, sir; but the laborer, by combination, when he does not think he has enough, comes and says that he must have some more, and he generally gets it; and when we say we want some more, we generally do not get it.

Mr. SIMS. You do not always get it. Sometimes you do.

Mr. ESCH. Are you all through?

Mr. ADAMSON. I am not through, but I am going to yield to the gentleman from Wisconsin.

Mr. ESCH. I do not want to proceed unless you are through.

Mr. ADAMSON. I am going to wind up this examination.

Mr. ESCH. Senator Townsend asked yesterday with reference to the operation of the Canadian act, and you quoted something from the report of Mr. Asquith, the English authority. Mr. Asquith gave certain grounds of opposition or objection to that act, did he not?

Mr. KRUTTSCHNITT. I do not know; I do not remember. This memorandum I wrote was written, except that part that quotes the United States Board of Mediation and Control, two or three years ago.

Mr. ESCH. One of the objections which Mr. Asquith cites against the operation of the Canadian act is as follows:

Labor claims, further, that employers are guilty of exploitation during the period in which strikes are not legally permitted.

Did your special representative report anything on that feature of the law?

Mr. KRUTTSCHNITT. I think that claim has been made by labor. I do not remember whether this report stated that or not.

Mr. ESCH. Is it not a fact that in some of those cases of strikes on some of the railroads pending the investigations, when the employees could neither strike nor the railroads lock out, did not the railroads build stockades, employ men and provision them, so that they might

be ready in case the strike was declared, notwithstanding the finding of the arbitration award?

Mr. KRUTTSCHNITT. I expect that may be true. On the other hand, labor can prepare also.

Mr. ESCH. Do you know whether or not labor did prepare in these cases of strikes or threatened strikes?

Mr. KRUTTSCHNITT. No; I do not.

Mr. ESCH. There is another objection made against the Canadian act, and that is with reference to enforcement of its penal provisions. You are familiar with the act, are you not?

Mr. KRUTTSCHNITT. Reasonably so; yes, sir.

Mr. ESCH. You know it provides very severe penalties for the employees to go out on strike pending the investigation or for the companies to declare a lockout pending the investigation?

Mr. KRUTTSCHNITT. Yes.

Mr. ESCH. Have those penalties been enforced under the Canadian act?

Mr. KRUTTSCHNITT. I do not know. All I can tell you is that this paragraph from the report of the Board of Mediation attracted my attention and seemed to be extremely convincing. Now, how far those gentlemen went in these questions I do not know. I accepted their conclusion.

Mr. ESCH. According to Mr. Askwith's report, those penal provisions have not been enforced in Canada, for the reason "the employees felt they could not afford to prosecute and the employers did not think it wise to prosecute, hence the penal provisions have been made inoperative, much to the disappointment of the Canadian officials."

Would there be any different result if we adopted a like law in the United States?

Mr. KRUTTSCHNITT. Possibly not. But if we adopted a law that would stop 90 per cent of the strikes, as the Canadian law has done, penalty or no penalty, I think it would be a good thing.

Mr. ESCH. Notwithstanding the fact that the penal provisions, which in any penal statute are supposed to be the essence of it, remain unenforced?

Mr. KRUTTSCHNITT. I would judge the law by its results. A competent United States board examined it and has said that it has been, in their opinion, successful. They give statistics showing that it has prevented 90 per cent of the strikes. Now, in writing my memorandum and in forming my judgment years ago, when similar reports were published in the reports of the United States Department of Labor, I concluded that whatever the effects of the act might be, if they were productive of that much good they were well worth imitating.

Mr. ESCH. What percentage of labor difficulties on American railroads go to strike?

Mr. KRUTTSCHNITT. In the last five or six years we have had a strike of firemen; we have had a strike of trainmen; we had a general strike of all kinds of shopmen. We should have had this general strike, if it had not been averted by legislation. That is four strikes in about five years on one system, which is a very much larger proportion than reported by the United States Board of Mediation as prevailing in Canada.

Mr. ESCH. A great percentage, however, of those difficulties were settled short of strike, were they not, by our own board of conciliation and mediation?

Mr. KRUTTSCHNITT. The board of mediation and conciliation is reporting on Canadian strikes that 90 per cent were averted.

Mr. ESCH. I understand that; but in the United States under the Newlands Act has not the vast percentage never gotten to a strike?

Mr. KRUTTSCHNITT. This firemen's strike you speak of was up to the board of mediation and conciliation, and yet they struck. The trainmen's strike was up to the board, and yet they struck. The shopmen's strike—that did not come under the Newlands Act. The Newlands Act was for railway men alone, but the shopmen struck despite suggestions of arbitration; the trainmen, in August, I say, would have struck. They spurned arbitration, and they would have struck but for legislation.

In three of those cases, certainly, out of four, the Newlands Act had a chance to work. The board, under the Newlands Act, did not take up the trainmen's matter, because they spurned it; they said they would not arbitrate, and they would not put their troubles up to any commission or any tribunal. The railroad presidents suggested that they be submitted to a tribunal to be named by the President—a special one—and they would not do it.

Mr. ESCH. What assurance would we have had with the Canadian act at that time that those difficulties would not have gone to strike?

Mr. KRUTTSCHNITT. None, except the experience of the past with the act in Canada.

Mr. ESCH. Your conclusion, therefore, is that something along the lines of the Canadian act would be beneficial in the United States in minimizing strike troubles and lessening their number?

Mr. KRUTTSCHNITT. Yes, sir.

Mr. ESCH. And that that is a system that is adaptable to the United States?

Mr. KRUTTSCHNITT. I do not know of any conditions in Canada that differ materially from our conditions here, and I have, therefore, assumed that what worked over there ought to work here. They have the same things to contend with; the brotherhoods have their organizations on the Canadian lines, just as they have them on the American lines; the Canadian people are pretty much the same as ours. I suppose if you took a dozen of each and mixed them up nobody could sort them out. Their ideals seem to be the same; their form of government does not vary very much from ours, as I understand it.

Mr. ESCH. Do you know whether they have had any labor troubles on the Inter Colonial, which is owned by the Government of Canada?

Mr. KRUTTSCHNITT. No; I do not.

Mr. ESCH. I was wondering whether or not Government ownership lessened the liability of strike troubles?

There is another subject matter. You spoke of the great losses of life owing to trespasses upon railroad tracks or upon railroad property. Why is it that they are so vastly greater than on European roads?

Mr. KRUTTSCHNITT. Because there does not seem to be either any law prohibiting it in the United States, or, if there is a law, that it

is enforced. When this matter was discussed before a committee of Congress—I think you were a member of the committee, when I appeared a year or two ago, were you not?

Mr. ESCH. Yes.

Mr. KRUTTSCHNITT. Some gentleman said there is a strict law in New York against trespassing on railroad tracks, and I said at the time that I believed then, and I believe now, that however excellent the law, it is not enforced. I do not know of any State in the Union that I am familiar with at all, where there is the slightest restriction about walking on railroad tracks.

Mr. ESCH. Notwithstanding the fact that some 30 States have passed such laws, there is little or no enforcement of them; is that the fact?

Mr. KRUTTSCHNITT. That must be the fact if they have passed the laws. There seems to have been no diminution in the deplorable number of deaths from trespassing.

Mr. ESCH. I happened to see some statistics, gotten out by the American Railroad Business Association, showing that in the decade from 1900 to 1910 there were 60,000 people killed in the United States and 53,000 injured, while in Great Britain during the same period there were a little over 1,000 killed and a little over 4,000 injured, making a total of a little over 5,000 in Great Britain as compared with 103,000 in the United States for the same decade.

Mr. KRUTTSCHNITT. In drawing conclusions from the statistics on that, you are very apt to be misled by mere magnitude of numbers. I have studied these matters quite closely for the last 15 to 20 years, with a view of stopping loss of life on our own lines, and the thing that has impressed me most is the fact that you can not get any very intelligent comparison of injuries as between the roads of any two countries, for the reason that a man pinching the end of his finger injures himself, or he may have one of his legs torn off and he injures himself, and the two are very different, yet it seems to be almost impossible to get any basis of comparison.

The statistics of the Interstate Commerce Commission are based on the inability to perform any labor for a given number of days. That is not the same in England. If we had exactly the same method of gauging injuries, the disparity would not be as great. We must remember that in England they are operating about 23,000 miles of railroad. In the United States we are operating 260,000 miles of railroad.

Mr. ESCH. Yet they have denser traffic conditions, more passengers hauled per mile per year?

Mr. KRUTTSCHNITT. Quite so, but the standard English railway is a double-track railway. The standard American railway is still a single-track railway. The disparity in conditions and the risk of accidents is not as great as the general public imagines.

Now, of the great number of killed on the American roads, trespassers make up, as I remember it, over 80 per cent of the deaths, and it has always seemed to me that there was no more unjustifiable taking of human life than the killing of trespassers, because if they were made to obey the law and keep off the railroad tracks, they would not be killed. I have found fault with the slow diminution of the number of people killed on the Southern Pacific, but analysis shows that where safety is dependent on means that the company can

control our results have been remarkable and surprising, even to me. We have reduced the fatalities to passengers to nothing. On our system, large as it is, there has been but one death of a passenger on a train due to any accident for over six years. The number of fatalities amongst employees engaged in train service is only from 14 to 15 per annum. We have reduced the number of train accidents 86 per cent in about 15 years, and the only dark spot in our record is the killing of trespassers, and that has not been reduced in proportion to the number of trains run, simply because we can not control it.

Mr. ESCH. There is not any State through which your whole system runs, except the State of Washington, that has sought to legislate on the subject of trespassers on railroad lines?

Mr. KRUTTSCHNITT. Not one has done so.

Mr. ESCH. Only one. You go into Washington?

Mr. KRUTTSCHNITT. No; we do not touch Washington. The northern terminal of our system is Portland, Oreg.

Mr. ESCH. Then there is not a single State that has passed a trespass law?

Mr. KRUTTSCHNITT. No. Yet our counsel have been instructed year after year to present this matter to the legislatures when they assemble, and it has been without any effect whatever.

Mr. ESCH. The only relief sought has been to the State legislatures; no action has been taken by Congress? I should like to submit, with your permission, a question to Mr. Thom on the constitutional right of Congress to pass a law with reference to trespassing upon the tracks or property of interstate carriers.

Mr. THOM. I think it has that undoubted power. I think it follows from the decision of the Supreme Court of the United States in the Southern Railway case, where the power of Congress to provide for safety appliances on intrastate trains was upheld as endangering the operation of the road in interstate commerce. They said that it was one instrumentality, and that Congress had complete power to protect it in all its aspects.

Mr. ESCH. Then you think that Congress could exercise its police power in that direction, do you?

Mr. THOM. Yes. And I will say more, Mr. Esch, that a committee of men connected with the railroad service has for a considerable time been requesting me to draw an act to be presented to Congress, and the only reason I have not done so is for the lack of time.

Mr. ESCH. Then you would think that was not such power as ought to be left to the administration of States?

Mr. THOM. Well, inasmuch as it is not being prevented now, and most serious loss of life is being caused by it, I think it would justify the Congress in taking hold of it, and I think the States would not object to Congress taking hold of it.

Mr. KRUTTSCHNITT. I do not see how they can complain, because they have not done anything about it themselves, and this killing of trespassers goes on from year to year unabated. My recollection is between 5,000 and 5,500 a year are being killed right straight along.

Mr. ADAMSON. I agree with Mr. Thom that if the power of Congress is necessary, exercise it; but will not the local communities insist that you require the railroads to abolish grade crossings if Congress does that?

**Mr. KRUTTSCHNITT.** These accidents do not occur on grade crossings. The commission does not allow us to class the death of a person on a crossing as that of a trespasser. He has a right to be there. He is not a trespasser. A trespasser is a man who leaves the road crossing, walks along the right of way, or trespasses on the trains of the carrier to steal rides. Take the thousands of men who undertake to ride on freight trains, standing on the buffers between freight cars, or riding on the trucks, and getting in other positions of danger. Those people are trespassers. It is the most frequent thing in the world in reading about a freight wreck to find that one or two dead men have been found in the wreckage, bodies of men who were stealing rides.

**Mr. ADAMSON.** I do not see how there could be any question on earth of prohibiting men from stealing rides on those freight trains.

**Mr. ESCH.** You have stated that Canada, with reference to her railroads and their management and operation, is very similar to the United States. Canada does have a trespass law and enforces it. The penalty is \$50, I think. If she can enforce it, is the sentiment of the public toward observance of law sufficient to comply with a like law in the United States?

**Mr. KRUTTSCHNITT.** I am afraid there that you have asked me a question that I shall have to answer in the negative. I expect the Canadian, from his English origin, has a respect for the law that is entirely absent in our people. There is a disposition to ignore laws which is just as common as the disposition of the executives of the States not to enforce them. I can not, however, help feeling that if there were a penalty against trespassing on railroad tracks you would have the energies not only of the executive officers to enforce these penalties, but they would be spurred on by the railways for their own protection.

**Mr. ESCH.** As it is now, many roads have their own railroad police for the very purpose of arresting trespassers, and they take them to the local justice courts, and they fail to convict them, do they not?

**Mr. KRUTTSCHNITT.** Well, we have done quite a good deal of that work ourselves. We have secured a good many convictions, but it has been discouraging that the percentage was so small. I remember when I first went to the Pacific coast there was a piece of line running to San Francisco, one or two cuts, that were used by the public and the school children as short cuts in going on their errands, and I stationed, at our own expense, a watchman at these cuts, and at that time there was a law against trespassing in San Francisco, a city ordinance, and I had a number of arrests made, and all I secured was a lot of personal abuse in the press, that treated me as a fresh "tender foot," as they called it, and stating that they would not stand for it.

**Mr. ESCH.** You were circumscribing the liberties of American citizens?

**Mr. KRUTTSCHNITT.** Yes; the court discharged those people, and after a trial of a week or ten days I gave it up.

**Mr. ESCH.** As illustrative of the different attitude toward law in Canada and the United States, let me just read this one quotation:

The Wabash Railroad operated part of its mileage through Canada in the year ending June 30, 1914. Ninety-four trespassers were killed and 135 in-

jured on the lines of that road, of whom only 3 were killed and 3 injured in Canada.

After quoting from one of the railroad authorities, President John B. Kerr, of the New York, Ontario & Western, in answer to an inquiry with reference to trespassing says:

I do not know of any locality in which the law against trespassing is enforced or where the magistrates are entitled to any recognition for the enforcement of the law. It is a very difficult problem for which I see no solution, except by education of the people, which is an extremely slow process.

That would mean, then, if that idea were adhered to, that we would go on killing and maiming for life what is equivalent to half an army corps every year in the United States. If Congress can pass a law, the fact that a Federal statute is more respected than a State statute or a city ordinance might enable us to reduce this terrible loss of life. Would it be your opinion that a Federal statute should be sought?

Mr. KRUTTSCHNITT. It is the experience of all of us, Mr. Esch, that a Federal statute always is more respected than a State one.

Mr. ESCH. Leaving that subject, now—

Mr. ADAMSON. Before you leave that subject, Mr. Esch, I would like to ask you, or the witness—whoever has the figures there—does the density of population or the number of persons transported bear any constant relation to the number of accidents or injuries?

Mr. ESCH. Not in the data that I have. Of course, density of population would have some effect, because of the constant tendency of people to cross tracks, getting to their places of work. On long stretches of your lines, Mr. Kruttschnitt, there would be no danger from trespassing whatever, but near the congested centers there would be very great danger.

Mr. ADAMSON. Mr. Esch stated that the density of population was much greater in England, and the number of passengers per mile; but how about the aggregate number of people hauled in a year in the two countries?

Mr. ESCH. They are greater in Great Britain than in the United States.

Mr. ADAMSON. The total amount?

Mr. ESCH. Yes; the total amount. If I remember rightly, the number in Great Britain amounts to about one and a half billion per year and the United States to a little over one billion. I will not be bound by those figures.

Mr. KRUTTSCHNITT. But the liability of a passenger to accident depends also largely on the length of his journey.

Mr. ESCH. True.

Mr. KRUTTSCHNITT. And when you take into consideration the number of passengers carried, it is far greater in the United States than in Great Britain.

Mr. THOM. The number of passengers carried 1 mile, you mean?

Mr. KRUTTSCHNITT. Yes.

Mr. ESCH. The railroads complain because of various State enactments regarding various railroad appliances, and also practices, and you have cited them: The length of cabooses, the number of wheels under the caboose, cuspidors, window screens, headlights, hours of service, full crews. If Congress passed a law as to them, and occu-

pied the field, it would supplant all of these State statutes, would it not?

Mr. KRUTTSCHNITT. Yes. Congress has already, or, rather, the Interstate Commerce Commission—I will put it that way—has, as I remember, already taken jurisdiction of headlights.

Mr. ESCH. That was under our act amending the boiler-inspection law, giving inspectors power to examine and investigate all parts of the locomotive; they get jurisdiction of that under that law.

Mr. KRUTTSCHNITT. I say they are exercising that now; they have prescribed standards, and Congress could, as to all of these other matters, no doubt prescribe uniformity.

Mr. ESCH. Would that be advisable, and would the roads prefer Federal action, rather than to further submit to the varying enactments of the several States?

Mr. KRUTTSCHNITT. I will cite our experience with the headlight law. Before I left the Pacific coast I had started devising a better headlight, and there was devised by our motive-power people at our Sacramento shops an extremely efficient and low-priced acetyline headlight. You can judge of the brilliancy of that headlight in comparison with the old oil headlights by simply remembering that most of the automobiles in our streets that have such brilliant lights are lighted with acetyline gas. That is really what inspired the thought. This headlight was improved, made very efficient, and was applied to substantially all of the 2,200 or 2,300 locomotives of the Southern Pacific System. That included the State of Texas. The headlight law was brought up in the Texas Legislature by the lobbies of the employees, who wanted the arc electric light put on the locomotives. Our officers appeared before legislative committees and told them that we had already incurred the expense of equipping our locomotives with a headlight almost undistinguishable from the electric headlight. The legislators were familiar with it, because they could see it on trains all over the State. Notwithstanding that, and notwithstanding the experiments made, which showed the illuminating power and the space-penetrating power of the acetyline beam, a law was passed prescribing the arc-electric headlights, and, under it, we had to scrap the headlights on 350 or 400 locomotives and buy others, which were no better. That is one of the results of different headlight laws.

Mr. ESCH. In the omnibus safety-appliance bill, as to which we gave you a hearing, you remember we did not prescribe the candle power of the lights, but left it to the commission to determine.

Mr. KRUTTSCHNITT. Yes.

Mr. ESCH. The Interstate Commerce Commission has now determined and fixed the standard, has it not?

Mr. KRUTTSCHNITT. I think so.

Mr. ESCH. That brings uniformity throughout the United States and supplants a great many State enactments with reference to headlights?

Mr. KRUTTSCHNITT. That will clear up the headlight situation. As I remember, the Interstate Commerce Commission requirements prescribe the candle power, and I think they also state the distance at which an object of a certain size—

Mr. ESCH. Eight hundred feet, I think.

Mr. KRUTTSCHNITT. Such as a man should be distinguishable. Had that provision existed in the Texas law we should have been saved an expense of over \$100,000 in buying other headlights, when those we had fully complied and more than complied with the specifications that the commission has now issued.

Mr. ESCH. And a like result would follow with reference to these other State statutes, in the matter of car equipment and so on?

Mr. KRUTTSCHNITT. Congress has already passed laws as to safety equipment on cars; we have had uniform practice in that respect for some time.

Mr. ESCH. That was the result of the standardization of freight-car equipment, in the act of 1907?

Mr. KRUTTSCHNITT. Yes.

Mr. ESCH. That has been complied with now?

Mr. KRUTTSCHNITT. Yes.

Mr. ESCH. I would like to ask you some questions with reference to mobilization of railroads in time of war. You alluded to that and cited, as an instance, the action of your road and other roads in sending troops to the Mexican border. I understand that the Council of National Defense, in conference with railroad executives, have planned for such mobilization, have they not?

Mr. KRUTTSCHNITT. Yes; that was done since the writing of this memorandum. The executive committee of the American Railway Association met about the time that the German Ambassador was sent home and discussed ways and means of meeting the situation. There was some conference with Mr. Willard, who is on the Federal Board of National Defense, and, as a result of these conferences, we appointed a national chairman, Mr. Fairfax Harrison, who should have complete charge of conferences with the Government and the Army officers as to their requirements. In addition to that we appointed four regional committees—one for the East, one for the Middle West, one for the Southwest, and one for the Pacific coast. These regional committees, each of which has a chairman, are composed of an aggregate of eighteen railroad presidents, who, under the general control of Mr. Harrison as general chairman, take up these questions with the Government. The four regional committees were appointed at the suggestion of the Army, to be located at or near Army headquarters for the four districts into which the country is divided, or "departments," I think the Army calls them, and we are now working under that plan. The Army officers were extremely complimentary to the railroads on the work they did in the Mexican mobilization. They expressed themselves in terms of the highest praise of the spirit of cooperation, the freedom from delay and accident, and, in general, of the way in which the railroads had done their part of the work. We think that the machinery we have created is far more efficient than that which was operating at the time of the Mexican mobilization, and we think under it that the railroads of the country, working as a unit, can give the Government and the Army most excellent service, that is to the limit of their present facilities, and do everything that they are called on to do.

Mr. ESCH. That would be true as to existing equipment, but in time of actual hostilities there would have to be special facilities constructed—terminal yards, loading and unloading platforms, special cars to carry the heavy ordnance, and things of that kind?

Mr. KRUTTSCHNITT. Certainly; to a great extent; that I touched on in my memorandum. Those details, I think, can be worked out by our railroad committee with the Government authorities. In the Mexican mobilization, foreseeing what would be necessary, and to avoid the trouble of answering frequent messages from our presidents, I issued a general instruction that, without reference to the New York office, they should do anything that was necessary to facilitate the handling of the troops, and then talk about it afterwards; and under that instruction our people laid a great many temporary sidings for the use of the Government without charge. We have recently spent \$75,000 building through the city of San Antonio to the Government reservation there and providing them with additional tracks and facilities. That was partly for the Mexican mobilization and partly for future necessities.

We are now considering spending about \$40,000 to connect the Fort Bliss Military Reservation, near El Paso, with our tracks. Under that arrangement our officers turned over to Army officers, simply on their giving them a receipt for the material, everything that they asked for in the way of rails, spikes, bolts, fastenings, bridge timbers, piles, lumber—all that they wanted—so that there has been no lack of cooperation. But I am sorry to say that at the present day the Government owes us two and one-half millions of dollars for services rendered, which is not disputed but which the Army officers tell us they are ready and willing to pay. Some of those bills are 10 months old already, but they say, "We have no money," and we shall have to wait, no doubt, a number of months more and we shall lose from \$100,000 to \$125,000 in interest.

Mr. ADAMSON. Why can not those bills be appropriated for next week at the next session?

Mr. KRUTTSCHNITT. I do not know. The Army say they have done everything they could to get us the payment, but there is no money.

Mr. ADAMSON. We can make an appropriation for it next week.

Mr. ESCH. We passed two or three deficiency bills, did we not?

Mr. ADAMSON. Oh, yes.

Mr. ESCH. That evidently would come under a deficiency appropriation.

Mr. THOM. Would it not come under the Army appropriation?

Mr. ESCH. It might be under that. Mr. Doremus says that one of the deficiency bills did not pass.

Mr. DOREMUS. The general deficiency bill did not pass, nor did the sundry civil bill.

Mr. ESCH. Both of those carried large appropriations for the Army, necessitated by operations near the border. As your railroad, Mr. Kruttschnitt, is the only one that parallels the border, your company is probably concerned more than any other road in the United States in that regard. But I was thinking of special facilities in a time of emergency. We are now going to the 16-inch gun basis. There is only one car in the United States that can carry a 16-inch gun—and I think that is owned by the Bethlehem Steel Co.—and our new battle fleet is to be supplied with them, I understand. How many roads in the United States can sustain a car carrying a 16-inch gun? They have got to be transported from the place of manufacture.

Mr. KRUTTSCHNITT. What does a 16-inch gun weigh?

Mr. ESCH. A 16-inch gun, 49 feet 3 inches in length, weighs 284,000 pounds. A 16-inch gun, 67 feet 2 inches in length, weighs 367,000 pounds.

Mr. KRUTTSCHNITT. Sixty-seven feet long?

Mr. ESCH. Sixty-seven feet long. Now, there is no existing equipment—

Mr. KRUTTSCHNITT. Weighs 367,000 pounds?

Mr. ESCH. Yes.

Mr. KRUTTSCHNITT. Why, there is no important railroad in the United States that is not to-day carrying weights in its locomotives fully as great as that, in that length; and the only thing necessary would be a vehicle that could carry that weight properly and distribute the weight properly along the rails. That is such an exceptional kind of work and so few of those vehicles would be needed, and so seldom, that it seems to me that the Government itself or the Navy Department should provide the vehicles.

Mr. ESCH. There is only one, as I understand it, now; and that is owned by the Bethlehem people.

Mr. KRUTTSCHNITT. It would be a comparatively easy matter, say, to construct 10 or 12 of them. The cost would not be very great. They would have to have, of course, more wheels than the ordinary flat car, so as to distribute the weight better.

Mr. ESCH. That leads me to this thought: Then, in case of emergency, the Government ought to supply, at its expense, these conveniences?

Mr. KRUTTSCHNITT. Those what you might call exceptional conveniences?

Mr. ESCH. Yes.

Mr. KRUTTSCHNITT. The railways can supply flat cars in almost any number for the transportation of field artillery and supplies and other things necessary for the Army or for the carriage of ordinary guns. We have carried a great many guns over our road—not as large as this, of course—but a great many to the Benicia Arsenal, where I have seen them, on blocking alongside our track, in large numbers. Some of them were very large guns, but, of course, nothing approaching this; and the carriage of those was effected without any particular trouble. I think some of those ran up to 10 or 12 inch guns, for the fortifications around San Francisco; but very special equipment, I think, the Government should provide. Now, the equipment that will be most sorely needed—I do not know how it would be provided in a very large mobilization—is passenger equipment, either coaches or sleeping cars. It has been the custom of the Government heretofore to transport its troops in sleeping cars. A sleeping car carries only about 30 or 32 men. A coach that has 70 or 80 seats in it is parceled out by the Army to troops, giving them from  $1\frac{1}{4}$  to 2 seats per soldier. Now, that requires such a large number in case of any large movement that it has often seemed to me that there ought to be some way to supply a large number in case of mobilization. The roads have not enough to supply any very great number without interfering seriously with our service to the public. However, the European nations, I understand, in times of emergency simply use the railroads for the purpose of mobilization requirements

regardless of public needs; they use everything for that purpose. I know numbers of friends returning from Europe have said that in certain periods they could not move because the railroads were transporting soldiers and they would not take passengers.

Mr. ESCH. All business is barred under stress of military necessity over there, and that could be done here, I suppose.

Mr. ADAMSON. We have the same act now in the last Army bill, Mr. Esch.

Mr. ESCH. Yes; I think that is true.

Mr. KRUTTSCHNITT. What I want to emphasize is this: That the railroads, in cooperation with the Government, have already taken steps to operate the entire system, such as it is, as a unit, regardless of corporation lines, in case they are called on by the Government. The small amount of double track and want of sidings at detaining points will, however, seriously embarrass movements.

Mr. ESCH. Mr. Baker, of the office of the vice president and general manager—Mr. W. R. Scott, of the Southern Pacific—gives these figures with reference to moving an army unit. To move a field army would require 2,115 passenger cars, 385 baggage cars, 1,055 box cars, 1,899 stock cars, and 775 flat cars; a total of 6,229 cars, which makes about 366 trains, and requires that number of locomotives.

Mr. THOM. That is Col. Baker of the Army.

Mr. SIMS. What is a unit? A corps?

Mr. ESCH. Yes; that consisted of an Infantry, Cavalry, Artillery (Light), Horse Artillery, and Mountain Artillery regiments; also an Engineer battalion, a Signal Corps, and other organizations.

Mr. SIMS. How many men?

Mr. ESCH. Twelve thousand two hundred and thirty-one.

Mr. THOM. We have requested the Secretary of War to permit Col. Baker to come before this committee, at its request, and testify; and we shall ask the committee at the proper time for an invitation for Col. Baker to come here.

Mr. ESCH. I think it is a very important line of inquiry.

Mr. ADAMSON. The time for adjournment has arrived. We will adjourn now until 10.30 to-morrow.

(Whereupon, at 1.30 o'clock p. m., the joint committee adjourned until to-morrow, Thursday, March 29, 1917, at 10.30 o'clock a. m.)



# INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT (CONTROL AND REGULATION.)

THURSDAY, MARCH 29, 1917.

UNITED STATES SENATE,  
JOINT SUBCOMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The joint subcommittee met at 10.30 o'clock a. m., Hon. William C. Adamson (vice chairman) presiding.

Mr. ADAMSON. The committee will come to order. Are you ready to proceed, Mr. Kruttschnitt?

Mr. KRUTTSCHNITT. Yes, sir.

Mr. ADAMSON. Proceed, Mr. Esch.

## STATEMENT OF MR. JULIUS KRUTTSCHNITT—Resumed.

Mr. ESCH. I think I will ask to have printed in the record a table that was presented in the address of W. L. Park, vice president of the Illinois Central Railroad Co., delivered before the National Association of Railway Special Agents and Police, at New Orleans, La., May 25, 1916. I gave the summary yesterday, in asking a question of Mr. Kruttschnitt; but I think it would be better to have the whole table inserted. The table seems to be based upon data presented to Mr. Scott, of the Southern Pacific, by Col. J. E. Baker, of the War Department.

Now, taking another line of inquiry, and I want to be very brief, because I think it is desired to start with another witness to-day—

Mr. ADAMSON. If we get through with Mr. Kruttschnitt we will start with Judge Nolan.

Mr. THOM. Judge Nolan will not take very much time.

Mr. ESCH. In hearings had before our committee on various bills in the last six or eight years and hearings before the Senate Committee on Interstate Commerce and hearings before the Interstate Commerce Commission on rate increases, or the rate-advance cases, the railroads have uniformly contended that owing to a limitation on their earnings, because of a proscription of rates by the commission, the said carriers were not able to keep up with the needs of traffic, and therefore there was a shortage in car equipment. Has not that argument been commonly made?

Mr. KRUTTSCHNITT. I think it has been made more commonly by the press and by boards of trade. The carriers have provided equipment, perhaps not as much as they should like to provide, but the use of equipment is elastic. If they have a certain number of cars by proper movements, by reducing free time and reducing the time held

by consignees, by higher demurrage, by a higher per diem rate established against other carriers who use the cars they can expedite their movement and make them carry a great deal more traffic, as much as 75 or 90 per cent more.

Mr. ESCH. It is a fact, however, that some roads are underequipped, so far as cars are concerned, is it not?

Mr. KRUTTSCHNITT. Yes, sir; some are. A great many short roads have no equipment.

Mr. ESCH. They depend on the cars of other carriers to do their own local carriage, as well as exchange traffic?

Mr. KRUTTSCHNITT. Yes, sir; that is principally the case with small independent roads built out from larger systems. There are quite a number of small roads built out from our lines that have no equipment at all. You never see a car bearing their initials off their line. They have a moderate number which they use for local business but nothing which they let leave their line.

Mr. ESCH. I ask a question based upon a report made by the American Railway Association of February 6 of this year:

Ten years ago the railroads had 1,840,000 freight cars; on December 31, 1916, the number had grown to 2,518,855 cars, an increase for the 10-year period of 678,000 cars, which would make an average annual increase of 67,800.

In your opinion, was that a normal increase, an increase sufficient to meet the growing needs of commerce during the past decade?

Mr. KRUTTSCHNITT. I think, if you will take the capacity of the cars in the aggregate for the two periods, you will find that it was.

Mr. ESCH. The capacity of freight and flat cars—the gondola—has been increased during the decade?

Mr. KRUTTSCHNITT. Very much.

Mr. ESCH. So that increase in capacity added to the increase in the number of cars, you think, has met the requirements of commerce?

Mr. KRUTTSCHNITT. I mean, taking the aggregate capacity of cars in the first period and the aggregate capacity in the second you will find it about in proportion with the increase of freight traffic.

Mr. ESCH. Has the carload lot increased or decreased within the last 10 years—the weight?

Mr. KRUTTSCHNITT. For all commodities?

Mr. ESCH. Yes.

Mr. KRUTTSCHNITT. I think it has. I can not tell you offhand how much. That will appear in the statistics published by the Interstate Commerce Commission.

Mr. ESCH. My recollection was that the carload weight had diminished.

Mr. KRUTTSCHNITT. Not diminished. But it is true—I can not give you the figures—it is true that the average carloads have not increased very rapidly and have not increased as rapidly as the capacity of the cars. I wish to say that while the roads have ordered fairly liberally of equipment, I think it is also true that they have cut their requisitions down on account of hard times with them and the high rates they have to pay for money.

Mr. ESCH. That was one of the arguments presented which would result in rather less than normal production of cars for the country.

Mr. KRUTTSCHNITT. Well, the figures you read show an increase in the number of cars less than the increase in the freight traffic.

Now, those figures will be modified when you take the aggregate capacity of the cars.

Mr. ESCH. And yet, it has been found they have not increased according to the tonnage.

Mr. KRUTTSCHNITT. Some; not much.

Mr. ESCH. During the last 10 years there have been several periods of car shortage, have there not?

Mr. KRUTTSCHNITT. Yes.

Mr. ESCH. In 1907 there was a car shortage almost the entire year. I do not know whether you have the chart to show that or not.

Mr. KRUTTSCHNITT. Yes; I have a copy of that chart.

Mr. ESCH. You will notice in 1907 there were only possibly three months, during the midsummer season, when there was a surplusage?

Mr. KRUTTSCHNITT. That is true.

Mr. ESCH. And the largest shortage amounted to possibly 140,000 cars?

Mr. KRUTTSCHNITT. Nearly that, or a little over 135,000.

Mr. ESCH. That was not during any period of hostilities. No war conditions were existent during that time?

Mr. KRUTTSCHNITT. No; but it was an unusually active year.

Mr. THOM. May I make a suggestion there on the question you are asking?

Mr. ESCH. Certainly.

Mr. THOM. I would like to call the committee's attention to the importance of numbers of cars as well as the capacity of cars in the matter of meeting the necessity for car distribution. You can not distribute a car of twice the capacity to two places. If there was a call in two places for two cars, and you have but one car, no matter how great the capacity of that one car is you can not answer the calls.

Mr. ESCH. But those increases were more in the capacity of the open cars, the gondolas, and the cars carrying coal and supplies of that type. Their capacity was increased more than the box-car capacity was increased, was it not?

Mr. THOM. Mr. Kruttschnitt can tell you more about that than I can. But here was an abnormal time. They were not keeping up the normal number of cars, and consequently you were not meeting the necessity for distribution to the same extent as if you had the numbers and capacities both.

Mr. ESCH. Why should you increase the capacity of your cars if you do not have the commerce to fill them?

Mr. THOM. Well, of course, we should not; but we think there is a commercial demand for all the capacity we can get, and so as to reduce the expense of the service, too.

Senator TOWNSEND. The thing I am interested in, if the Congressman will yield—

Mr. ESCH. Certainly.

Senator TOWNSEND. Mr. Kruttschnitt has said they have not materially increased the carloads; they have not used these cars to the full capacity. Mr. Thom suggested they needed more cars. Would it not have been better economy to have increased the number of cars than the size of the cars?

Mr. THOM. I think that is an important question to put to the witness.

Mr. KRUTTSCHNITT. The trend in handling traffic is toward larger units. I can speak more intelligently as to the practice followed by our road than I can for the roads in general. We started building nothing but cars of the highest capacity some 9 or 10 years ago. The wisdom of that policy was questioned, and the question was put to me by our president why we should do it, and we found if we could get a 50-ton car loaded to its full capacity 10 per cent of the time it was profitable. It justified the extra expense of the 50-ton car over the expense of the former standard 30-ton cars, and therefore we have been building that heavier car all along; and while for the United States the increase in car loading has not been great, it has been great on our lines, and has justified us in doing what we did.

Mr. ESCH. There was no car shortage, barring a brief period in the latter part of 1909, for the years 1908, 1909, 1910, and 1911. Then in the latter part of 1912 there was a considerable shortage, coming up to something like 55,000 or 60,000 cars. That was not due, of course, to war conditions. Was that due to an unusual yield of agricultural products?

Mr. KRUTTSCHNITT. You may have it almost any time on account of increased demand for agricultural products. You may have demands made on the carriers for cars in excess of the numbers that they have at hand to fill the requisitions. I would say that no carrier could possibly afford, unless they could get money at ridiculously low prices, to keep parked on sidings enough cars to meet the maximum demand at any one time. I think for such conditions as might be brought about by a war the roads are very much underequipped. They could not meet the demands, because those demands must be met instantly, and a question of hours would make a great difference with the Government frequently in moving supplies. But in moving the traffic of the country a shortage of, we will say, in two and a half million cars of, say, a hundred thousand at any one time means only slight delay—a delay of perhaps a day or a day and a half in moving traffic—and the carriers might make up the want of numbers by better service of the cars, by moving them more quickly, and trying to get them unloaded more quickly.

Mr. ESCH. In 1914 and 1915 there was a large surplus, due to stagnation of the traffic because of the war. Is not that true?

Mr. KRUTTSCHNITT. Yes.

Mr. ESCH. But in 1916 there was a shortage in March and April, and there was a very marked shortage for the last half of 1916, reaching a point of 120,000 cars in the latter portion of last year. I think that was about November. That condition extended into January, and still exists, does it not?

Mr. KRUTTSCHNITT. It does. And yet for the entire 10 years covered by the diagram before you there was an excess of cars for 93 days out of every hundred and a shortage on 7 days out of every hundred. The maximum surplus ran up to about 400,000 cars, which is about 16 or 18 per cent of the total, and the maximum shortage never exceeded about 6 per cent of the total.

Mr. ESCH. Is it a practice of the roads to take care of what is ordinarily known as peak loads, just as an electric lighting company has to maintain equipment and power for a peak load? Does a railroad company provide itself to take care of peak loads of traffic?

Mr. KRUTTSCHNITT. It does. It takes care of many peaks, but these you called attention to were abnormal peaks, where the extra equipment failed to take care of them promptly. If the railroad companies could do as the electric companies, it could take care of these peaks thoroughly. The electric company, when a peak comes along, overloads its machinery, which it can do perfectly safely, and counts on doing that for a short time. If the railroads could completely control their equipment by varying the rate of demurrage, varying the free time and working the equipment at overload, as the electric company does, it could handle these peaks very much better, and without over much dead capital.

Mr. ESCH. Of course, the equipment, when the peak is not being met, is very largely idle capital, as you say.

Mr. KRUTTSCHNITT. It is idle on our sidetracks.

Mr. ESCH. Every public utility must suffer that loss, must it not?

Mr. KRUTTSCHNITT. It should suffer some loss, but I do not think it should be compelled to suffer an unreasonable loss by being deprived of the capacity of working its plant overload.

Mr. ESCH. And, in your opinion, there is sufficient car equipment now?

Mr. KRUTTSCHNITT. There is sufficient car equipment now to handle very well the peak load of the latter part of 1916 and that existing now in the early part of 1917 if the carriers had been in possession of authority to work their equipment overload, but they did not have that authority.

Mr. ESCH. From whence would they derive this authority?

Mr. KRUTTSCHNITT. From regulating bodies.

Mr. ESCH. There is not any regulating power now as to car service, is there?

Mr. KRUTTSCHNITT. Yes; the carriers must file with the commission, as part of their tariffs, the free time allowed on equipment and the demurrage rates. Those are figured for normal times. The logical course to take with those charges would be in time of peak loads, to which you referred, to have them materially changed. The rate of demurrage should be raised, the free time should be reduced, and everyone using a car should be put under pressure to release it in the least possible time, but the carriers can not do it. They have to apply for permission to increase the demurrage or reduce the free time, and while the commission has that matter under consideration, overworked as it is, the emergency probably goes by.

Mr. ESCH. Heretofore, however, the matter of car shortage was in the hands of the railroads themselves, was it not?

Mr. KRUTTSCHNITT. Only to the extent that I spoke of.

Mr. ESCH. They, through the American Railway Association, adopted certain car-service rules and enforced them among themselves, or sought to?

Mr. KRUTTSCHNITT. Those were car-service rules among themselves with reference to what one road could do with the cars of another, as to returning them.

Mr. ESCH. There was no power behind those rules except the carriers themselves, who assented to their enforcement?

Mr. KRUTTSCHNITT. Yes; but the difficulty with the carriers has been, to take a concrete example, a large number of our cars came

East laden with goods for export. They were turned over at Chicago, to the Pennsylvania, the New York Central, the Baltimore & Ohio, or the Erie, roads reaching the Atlantic seaboard. If there were no ships to take the contents of the cars away and no warehouses to take the contents of the cars, we might fuss and fume and get after the Pennsylvania and the Baltimore & Ohio and other lines to return our cars, but they do not do it, because they can not get them unloaded and released.

Mr. ESCH. I agree with you, that if war conditions create a present car shortage by reason of congestion at port terminals, legislation given the Interstate Commerce Commission would be quite futile, but war out of the question, could not the commission be given power that would help to relieve the situation in time of emergency?

Mr. KRUTTSCHNITT. That is being done now by cooperation between an American Railway Association committee and the commission. The commission, whether they could do it constitutionally or legally or not, assumed control over car distribution, and said if an improvement was not brought about they would simply assume the authority—which they thought they had, although a number of lawyers consulted by the railroads thought they had not—and would handle the cars themselves, regardless of the wishes of the owners. To prevent that drastic action the American Railway Association conferred with the commission and appointed a committee of their own, to sit in Washington and enforce car-service rules more drastic than any ever enforced before, and that committee was given authority to fine recalcitrants, and we have the assurance of the Interstate Commerce Commission that much good has resulted therefrom. They backed up this committee of the railroads with their authority. The carriers know that the Interstate Commerce Commission is watching them and is ready to pounce on them and handle the matter themselves, if the conditions are not bettered, and under that pressure the condition has been very much bettered, as the commission has publicly stated.

Mr. ESCH. In the Interstate Commerce Commission car-service investigation order No. 9894, passed on the 18th of January of this year, the commission revised the car-service rules and ordered them to become operative on a given date, which date has subsequently been extended. There were three members on the Interstate Commerce Commission that filed dissenting views on the ground that the exercise of that power by the commission was beyond the powers granted in the act, and was an assumption of legislative powers.

Now, in view of that doubt as to the power of the enforcement of the car-service rules, which were largely framed in the first instance by the American Railway Association, would it not be well to have legislation to clear up any doubt as to the authority under the interstate-commerce act?

Mr. KRUTTSCHNITT. I do not see that that would make any particular difference. If you want to legislate it, and the legislation is reasonable and pays some respect to the rights of ownership, I can see no objection to it. It simply would confirm and, as you say, make more certain what is being done to-day. Carriers have not officially questioned that right of the commission. They are acting just as if the commission possessed that right. That they are doing good

is shown by quoting a press dispatch from Washington, dated February 25, 1917, to this effect:

Commission has issued the following statement: "The Interstate Commerce Commission has confidence in the commission on car service of the American Railway Association as the authorized representatives of the railroads of the country. Its members are doing excellent work in the interest of the general public, and much good is resulting from cooperation of the railroads in their efforts to meet the present emergency."

Mr. ESCH. I agree with you that the car-service commission has done a very excellent work; but where you leave it to the carriers to enforce the penalties prescribed by their own rules, you do not have much enforcement of such penalties; is not that a fact?

Mr. KRUTTSCHNITT. Except that we drew up very much more drastic rules and put more power in the hands of this car committee than any railroad committee has ever possessed in the history of the American Railway Association. Now, behind them they have the Interstate Commerce Commission; I think it is the particular province of Commissioner McChord to watch that part of railway operations, and he is there to spur them up if they do not apply the penalty, and if the penalty is applied and not obeyed he is there also to help them with the authority of the commission.

Mr. ESCH. Are any penalties now being enforced?

Mr. KRUTTSCHNITT. I do not know. I have not watched the operations of the committee since we formed it; but the Southern Pacific had a representative on the committee until a short time ago, who sat for four months on it, from November until about two weeks ago, and he informed me from time to time what they were doing; that the roads were then obeying their orders, and things were going along very smoothly. There was a period of interruption during which, I think unwisely, the American Railway Association took the committee away from Washington, and for about a month there was more or less discussion in the association as to what to do; but they finally acted, as I think properly, and sent the committee back here.

Mr. ESCH. Yes; they went up to New York.

Mr. KRUTTSCHNITT. It was sent back under the pressure of threats from the commission. But I am frank to admit it was an unwise thing ever to have taken them away from here, because they were doing good work, and their work was suspended for practically a month, until they were sent back.

Mr. ESCH. Might it not be wise in cases of emergency, which have occurred, as I have already indicated, to give the commission certain defined powers with reference to car service, interchange, and return of cars?

Mr. KRUTTSCHNITT. The difficulty is this: That if the regulation left in the hands of the owners to some extent control of their property, I do not think there would be any objection to it. But take, for instance, the railroads as a whole. There was a law, as I remember, passed early in the Civil War, giving the Government the right to simply seize railroads and work them during war conditions. Now, as it looks at present, that law will not be invoked to provide the Government with proper transportation, because the officers of the roads have formed a cooperative committee to act with the

Government to operate the roads themselves, but in such a way as to give the Government all they want, and has, we think, given it to them better and more promptly than they could have it if they assumed charge of the railroads and put military men to run them.

THE VICE CHAIRMAN. You are aware, I suppose, Mr. Kruttschnitt, that that act has been revived in the last Army bill?

MR. KRUTTSCHNITT. Yes, sir. I purposely referred to the Civil War law because, although I knew that there had been some proposition to revive it in a different shape, I did not know whether the new law was effective now or not.

Now, the analogy in handling cars with the Interstate Commission is very close to that. In other words, the carriers are cooperating with the commission to do everything that the commission could ask them to do.

MR. ESCH. That is due to the very peculiar conditions due to the war; but there was not such like cooperation of the American Railway Association in the previous car-shortage periods that I have referred to.

MR. KRUTTSCHNITT. I think that question has been settled forever by the creation of this commission; that war or no war, or after the war shall have ended, if any conditions exist creating car shortages, it would lead at once to the re-creation of or the assumption of its activities by this railroad committee.

MR. ESCH. It is very difficult to enforce these penalties, one carrier against another, because of their close relationship in traffic matters. Therefore may it not be necessary to have the punch of law to secure enforcement at times?

MR. KRUTTSCHNITT. That is for you to say. I have pointed out that under present conditions they have the punch—you can not call it of law, but assumption of authority which has been acquiesced in on the part of the carriers. The commission is exercising this authority, whether they have a law for it or not, and the carriers are acting with them exactly as if such a law existed. I think it is perfectly proper to collect fines, because they tell a pretty good story on me when I was president of the American Railway Association—that I started a committee that was to keep close watch of cars and compel their return to owners, and to fine offenders at the rate of so much per car per day who did not do so, and who misused equipment. We made Mr. Harrison the chairman of that committee, and the other members of the committee were selected from the executive committee of the association, under the specification, of course, that they were not interested in the matter at issue. The first case brought up was of our southern lines, who were accused of having misused the cars of a connection. They were put on trial and found guilty, and a very round fine imposed. The president of our company wrote me privately that he did not see how he could pay it: that he thought there were extenuating circumstances. I wrote him back, privately also, and said, "The jury has found you guilty and you will have to pay this fine whether you like it or not." And, after some further demurring, he paid his fine. He never incurred another. He was never brought up again. It cured him. But he paid a fine, as I remember, of between \$9,000 and \$10,000.

- Now, I say that a few fines like that imposed would cure this trouble very quickly, and this committee has the right now to impose the fines.

The VICE CHAIRMAN. You could not correct your own system until you got to be president of all the systems?

Mr. HAMILTON. He probably did not anticipate that he was going to have to correct his own system.

The VICE CHAIRMAN. The story is told about Brutus that he could not correct his own household until he got to be a judge, and then he got his own son hanged.

Mr. KRUTTSCHNITT. Probably I was in a place where I could not make excuses for the man.

Mr. ESCH. You say the commission has assumed this power. That is true in the decision I have cited, and Commissioner McChord, writing a majority opinion, said:

While all the members of the commission are not in accord with reference to the powers of the commission to make an order in this case, the wrongs are flagrant, and even if there were doubt as to the commission's power to give full relief by formal order, we think in an emergency that doubt should be resolved not only in favor of the carriers who are wrongfully deprived of their cars, but in favor of the shippers and the general public who would be without protection if, having the power, we fail to act.

Then Clark, commissioner, filed minority views, raising the question of their constitutional powers in the case, claiming that it was an assumption of legislative power.

Mr. THOM. Did he claim it to be unconstitutional—the assumption of that power?

Mr. ESCH. No; I probably had better read it. Here is what Clark, commissioner, says:

The commission is essentially an administrative body, exercising powers specifically delegated to it by the Congress. It also exercises quasi judicial powers likewise delegated; but if the law is to be interpreted differently from time to time to fit conditions that obtain on the railroads and the commission exercises in a time of stress a power which it has not only never before felt that it had, but which it has several times said it did not have, it adds to its delegated administrative and quasi judicial powers legislative powers for the exercise of which I can find no justification.

Mr. KRUTTSCHNITT. Taking a broad view of this freight-car situation, and prefacing what I am going to say by repeating that to move troops promptly in a war emergency, the railroads unquestionably require a very considerable addition to the numbers of their locomotives, and passenger cars particularly, and a very large addition to the number of special sidings and yards required for the entraining and detraining of troops exclusively, I think some equitable mode of providing for those expenditures should be devised by the Government. I do not think it is right to require the carriers for an emergency service to spend very large sums of money for providing at X, Y, or Z very large entraining or detraining yards to expedite the movement of troops, because they would be needed for that occasion, or, we will say, for that war only, and afterwards they are of no use except to the extent of whatever salvage the road might get.

One of the principal improvements that has gone along more and more slowly as time has gone on has been double-tracking. The standard railroad of the United States, you may say to-day—and

by standard I mean the standard established by the large percentage—is a single-track road. There are very few double-track roads in comparison with the total mileage, and certainly the double-tracking of the important roads leading to points where the Government would likely require rapid movement of troops is of the greatest importance. Unfortunately, that is an expenditure so great that any carrier at all short of funds for improvements has deferred that kind of an improvement.

Now, as to the freight cars, some thoughts occurred to me as to how their efficiency might be increased, and I have drawn up a little memorandum here, based on past experience, which I should like to read if you do not object.

THE VICE CHAIRMAN. Mr. Kruttschnitt, before you proceed with the matter you have just mentioned to Mr. Esch, if in an emergency—in war time, for instance—the United States Government should furnish the money to make these necessary conveniences and accommodations itself, I presume, whether or not the company would be willing afterwards to pay for them would depend on their usefulness in time of peace?

MR. KRUTTSCHNITT. Why, certainly; if the Government made these improvements in an emergency and the carrier had a reasonable need of them thereafter, I do not assume that anyone would object to taking them off of the Government's hands.

I make this suggestion because, as I told you, we have spent very liberally and without raising any question whatever with the Government. The emergency was too near to raise it. But I stated yesterday that we had spent money freely—I think in the aggregate \$75,000 or \$80,000—to provide those temporary facilities.

THE VICE CHAIRMAN. A great many of them might be so useful that although you might not deem them worth what they cost, you yet would be willing to take them at some price?

MR. KRUTTSCHNITT. I mentioned also yesterday that some of them were in that category. Others will certainly be of no use to us and will have to be taken up.

The condition of freight-car equipment in this country is now and for a number of years has been that of a totally lawless and unregulated pool. That is, the cars have been used regardless of ownership. Any carrier who could borrow, beg, or steal cars of neighbors in an emergency, used them as if they belonged to him; and, as you very properly said, the directive power to require these cars to be returned has not been great, and in times of very great stress orders issued to that effect have been ignored. I said that they were ignored because the penalties have been light, and the offenders found it more profitable to incur and pay the penalty than to obey the law.

But, watching the operations of the Federal reserve banks, these thoughts occurred to me.

SENATOR TOWNSEND. May I ask a question before you proceed to that? Do the State commissions assume to regulate your handling of cars as to demurrage, and so on?

MR. KRUTTSCHNITT. Only to this extent, that in emergencies we have been confronted with threats. Generally we have been able to explain to the State commissions the conditions we were in, and to convince them we were doing all that mortal men could do to relieve

the situation, and they have been commendably patient; but they have threatened on numbers of occasions to take the law in their own hands and establish drastic penalties if we did not provide so many cars for the use of the State.

Senator TOWNSEND. Another question: Supposing the president of your company, in the case you have mentioned, had continued to refuse to pay that \$10,000 fine, is there any way to collect it?

Mr. KRUTTSCHNITT. He would not have remained president of the company.

Senator TOWNSEND. You regarded it as a moral obligation rather than a legal obligation?

Mr. KRUTTSCHNITT. I regarded it as both, in the circumstances. We were parties to these agreements; we were members of the association, and not only as president of the association, but as chairman of the Southern Pacific Co., I had approved these rules under which he was working, and as a question of discipline, company discipline, I could not have permitted him to disobey.

May I proceed?

Senator TOWNSEND. Yes.

Mr. KRUTTSCHNITT. Car shortage may be caused by—

(a) Insufficient additions to equipment to keep pace with growth of traffic which at times may increase abnormally fast or to replace equipment worn out.

(b) Improper distribution of equipment, causing shortage in one section and surplus in another.

(c) Inefficient use of equipment by carriers.

(d) Improper use of equipment by shippers and consignees, resulting in unusual delays.

The causes (b), (c), and (d) are remediable by adequate control, which, if vested in and exercised by the carrier, could in the comparatively few instances that arise under (a) tide over the emergency.

Statistics show that normally a surplus of cars has prevailed in the United States; that in the past 10 years an idle surplus has stood on yard and sidetracks 93 days out of every 100; that shortages exist for but 7 days out of every 100; that the maximum surplus at any one time was 20 per cent of the total equipment and the maximum shortage at any one time but 6½ per cent of the equipment.

The attached chart (which is the one that you have before you) shows that a very slight increase of efficiency in the use of equipment would easily offset, and far more than offset, the comparatively few shortages that have occurred. For instance, in the first eight months of the year ending June 30, 1917, the Southern Pacific handled an increase of 79 per cent in ton mileage over 1915, without embarrassment, by loading cars 17 per cent more heavily and getting 54 per cent more mileage out of each one. The number of cars now owned by the carriers is sufficient, and much more than sufficient if properly controlled, to handle the traffic of 1917, the heaviest that has ever been offered, and a large increase even over that if offered in the future.

From the fact that under existing conditions every carrier in times of stress begs, borrows, or appropriates cars wherever it can find them, it follows that the freight cars of the country are used as if

they belonged to a common owner; that is, they are pooled with absolutely no regulation nor control. Inasmuch as the circulation of cars is analogous to the circulation of money, we may receive valuable suggestions by studying the latter problem, which has been regulated to a considerable extent. Thus:

1. Require as a condition precedent to engaging in interstate commerce that each carrier shall contribute to a box-car reserve a percentage of its box cars based on its use of such cars. There are about 1,000,000 box cars owned by the carriers of the United States; assume a car reserve of 200,000 or 250,000 cars; the contribution of each carrier to this total should be based on the number of days' use of box cars on such lines for the preceding year.

The VICE CHAIRMAN. Before you go any further I will have to ask you about your first suggestion there. Do you propose to place an embargo, either absolutely or conditionally, upon the entry of any carrier into interstate commerce? Is it not the policy rather to compel all of them to enter interstate commerce?

Mr. KRUTTSCHNITT. Yes; I was not aware that I had said anything in conflict with that.

The VICE CHAIRMAN. You said you would place a condition on them that they should not enter interstate commerce unless they made such a contribution as you suggest.

Mr. KRUTTSCHNITT. Then the language is unfortunate.

The VICE CHAIRMAN. I called your attention to that because I thought it was inadvertent on your part.

Mr. KRUTTSCHNITT. It was, and it can be corrected by stating that on taking Federal incorporation they shall contribute.

2. Place the administration of the box-car reserve under a commissioner with plenary power, assisted by the necessary staff, who shall report to the executive committee of the American Railway Association.

3. Prescribe standards of condition, capacity, etc., for box cars that will be accepted as contributions to the reserve. Rate them according to capacity—for instance, unity for a 40-ton car, more than unity for a 50-ton car, scaling downward for lower capacity. The reserve cars to be prominently marked. The ownership lettering to be inconspicuous.

4. Make the present per diem rate of 75 cents permanent for all except reserve box cars; for the use of reserve box cars, either by owner or foreign lines, assess a per diem rate 10 per cent to 20 per cent higher than for other cars.

5. Clothe the car reserve commissioner with ample authority to assess penalties for failure to obey such rules and instructions as may be adopted.

6. Impose a straight \$3 demurrage, which has been working satisfactorily for some time in California under the authority of the State and Interstate Commerce Commissions, has caused little or no complaint from the public, and has cut down the delays by one-third.

7. Reduce free time whenever possible.

8. Require the roads in times and places of car surplus to hold reserve cars on their lines if not needed elsewhere, with remission of per diem.

9. Require roads with a surplus of cars on their lines over their ownership to equalize with lines showing deficits either with reserve cars or with others of equivalent rating.

10. Repairs and maintenance of reserve cars chargeable to owners to be assumed by the commissioner, to whom shall be paid per diem earnings on such cars. Out of these earnings shall be paid administration expenses, repairs, and maintenance, the balance to be apportioned to contributors to the reserve fund in proportion to their contributions.

11. Roads that make repairs on their own cars in the reserve should charge to the commissioner repairs usually chargeable to owners.

12. The commissioner to keep all necessary records of car location, per diem returns, etc., that will enable him to equalize equipment with minimum haul of cars and to properly account for money received and distributed by him.

Car reserve plan need not be confined to box cars; flat cars could be included. Roads using special types of cars—coal cars, etc.—could create regional reserves of such cars.

Under such a plan all roads that use box cars in interstate commerce would have to contribute to the car reserve.

The high per diem on reserve cars would induce holders to want to get rid of them; would therefore promote their circulation, and under the close watch kept of them would produce mileage approximating twice the 25 or 30 miles of the ordinary car. Two hundred thousand such cars would render the service of 400,000.

A high per diem on all cars would induce lines with an excess to seek to get rid of enough cars to reduce the number on their lines to those owned. When in this condition the high rate is not burdensome, because the road receives per diem at the same rate that it pays.

No plan, of course, can be successfully carried out without the approval and cooperation of the Interstate Commerce Commission, whose authority for charging increased demurrage and allowing shorter free time must be obtained.

The VICE CHAIRMAN. Referring to that 75 cents per diem for a car, do you not think that could safely be increased several hundred per cent? You know they charge a dollar and a dollar and a half a day for a buggy and \$5 or \$10 for an automobile, and it does seem to me that 75 cents a day for a car is ridiculously small.

Mr. KRUTTSCHNITT. If you had to pay the per diems, and knew how rapidly they ran up at even 40 cents a day, you would understand that it was a blister that drew pretty hard.

The VICE CHAIRMAN. But if the business was prosperous, as you just observed, it would not be much of a hardship to increase the per diem?

Mr. KRUTTSCHNITT. The hardship comes, as I said to Mr. Esch, on the small road, which is generally a lumber road. For example, the McCloud River is a lumber road, a branch from the Southern Pacific up in northern California. It has a mileage of 150 or 160 miles. It has a few cars of its own that it uses locally. The bulk of the cars that it uses are those of foreign lines. The Southern Pacific, for instance, has some Union Pacific cars, some Rock Island

cars empty. These people have lumber to go to Rock Island and Union Pacific territory; those cars are put in, loaded, and sent out. If we have not those, we have to put in our own cars to serve these people. Now, if you impose on them too high a per diem charge, they just can not live.

Now, under this box-car pool, you see, those roads would be required to buy enough box cars to contribute to this pool.

The VICE CHAIRMAN. That hardship would not apply if you increased the demurrage, would it? Demurrage would spur them up.

Mr. KRUTTSCHNITT. Demurrage, in a case where you deliver cars to a connection, is called per diem.

The VICE CHAIRMAN. They do not charge each other demurrage at all?

Mr. KRUTTSCHNITT. No; the entire road payments are called per diems and the payments made by the public demurrage.

Mr. ESCH. This plan that you have suggested would be for the voluntary adoption by the American Railway Association, as I understand it?

Mr. KRUTTSCHNITT. No; it is proposed, and what we are here before you to ask for, is to provide for the Federal incorporation of railroads; and when they take out their Federal incorporation that at the same time they be required to contribute to this box-car pool.

Mr. ESCH. That would be a part of your legislative program, then?

Mr. KRUTTSCHNITT. Yes, sir.

Mr. ESCH. Do the car-service rules of the American Railway Association recognize the doctrine of reciprocal demurrage?

Mr. KRUTTSCHNITT. Their car-service rules are based upon the principle of reciprocal payments. They do not call it demurrage when it is paid by one line to another. It is called demurrage when it is a delay by the receiver of freight, when he delays unloading the car.

Mr. ESCH. Suppose the carrier delayed in furnishing the car—that is what I meant by reciprocal demurrage.

Mr. KRUTTSCHNITT. A law has been passed in some States providing for that, but I think it was more to establish a club over the carriers' heads—to make them more active in meeting car supplies. I do not know of any cases where severe penalties have been imposed.

Mr. ADAMSON. The interstate-commerce law requires that they furnish cars in a reasonable time. I believe that is the language.

Mr. ESCH. Upon due notice and reasonable demand. We have received in the mail a letter from Mr. Tipton, traffic manager of the Jacksonville Traffic Bureau, Jacksonville, Fla., in which he states:

We are very much interested in the question of a reciprocal demurrage—not a reparation for delay in furnishing equipment for loading, but to cover the delay in placing cars for delivery after arrival at destination.

If the carrier is entitled to demurrage to cover the delay of equipment after arrival at destination when the delay in delivery is due to failure of consignee to accept delivery, then—or so it seems to me—the consignee is entitled to demurrage, based upon the same scale, where the carrier fails to make prompt placement for unloading after consignee has given orders for placement and has satisfied the demands of the carrier covering transportation.

What would be your view as to that request coming from this traffic bureau?

Mr. KRUTTSCHNITT. That view has been advanced in a great many States, and a great many States have passed a law to that effect, but I am quite positive that they have not been enforced. I suppose, under extreme circumstances, the law might be invoked, but up to now I have not heard of any severe penalties having been imposed.

Mr. ESCH. I think some States have passed laws penalizing a road so much per car per day for not furnishing the car. I think some Southern States have done that—Kentucky—

Mr. THOM. North Carolina is one. A number of them have those laws.

Mr. ESCH. I think that this letter of Mr. Tipton should be incorporated at this time.

(The letter referred to is as follows:)

JACKSONVILLE TRAFFIC BUREAU,  
Jacksonville, Fla., March 26, 1917.

Transportation: Reciprocal demurrage.

HON. JOHN J. ESCH,  
*Joint Committee on Interstate Commerce,*  
Washington, D. C.

DEAR SIR: We are very much interested in the question of a reciprocal demurrage—not a reparation for delay in furnishing equipment for loading, but to cover the delay in placing cars for delivery after arrival at destination.

If the carrier is entitled to demurrage to cover the delay of equipment after arrival at destination when the delay in delivery is due to failure of consignee to accept delivery, then, or so it seems to me, the consignee is entitled to demurrage—based upon the same scale—where the carrier fails to make prompt placement for unloading after consignee has given orders for placement and has satisfied the demands of the carrier covering transportation.

We have handled this matter with Chairman Meyer of the Interstate Commerce Commission, who, like myself, feels that the present act to regulate commerce does not cover this feature, and that accordingly the Interstate Commerce Commission is powerless to take action, and, being powerless to act, do not care to take the matter under consideration.

At the suggestion of Chairman Meyer, I requested, on December 12, an opportunity to submit to your committee our views, as it is our opinion that this feature should be embodied in your report to Congress, accompanied by a recommendation that the defect in the act to regulate commerce as thus indicated be remedied by appropriate corrective legislation, and we have been advised by Mr. Healy that effort would be made to accord us this opportunity, but I am this afternoon in receipt of letter from Mr. Healy stating that your committee has decided to suspend on Thursday, March 29, and that the witnesses so far summoned will consume your time up to the time of suspension. Further, that the date of resumption is contingent upon so many possibilities that at the present moment the committee can not set definite dates for appearance.

I am therefore thus writing you, as well as each of the other members of the Joint Committee on Interstate Commerce, asking, in view of the circumstances, if you will not accept this letter, and, based thereon, give the matter consideration, which we hope may be followed by favorable recommendation embodied in the report to be submitted to Congress.

Yours, very truly,

T. C. TIPTON.

Mr. ESCH. I have taken up too much time, I think, Mr. Chairman. I will yield.

Mr. KRUTTSCHNITT. Have those laws been very stringently enforced?

Mr. THOM. Sometimes they have.

Mr. ADAMSON. I should like to ask a few questions, but we want to hear from another witness, and I think I shall forego my examination of you. Your examination has been very complete and satisfac-

tory. Perhaps you may be around some time before the hearings end. We wish to thank you for your contribution to the literature on the subject.

Mr. SIMS. I have a note in my memoranda that I have overlooked. It is very important, and nobody has said a word about it. It was along the line of sleeping cars.

Mr. ADAMSON. Do you suppose you will be about the committee again during the summer, Mr. Kruttschnitt? Do you suppose it will be convenient for you to attend the committee hearings again in the summer? We will probably be at work until late in the fall somewhere in the United States.

Mr. SIMS. I think I will not be over 10 minutes.

Mr. HAMILTON. Can't you get your information from some other authority?

Mr. SIMS. I want to get it from an authority that can not be questioned.

Mr. THOM. I should like to get one of the members of the committee to ask a question for me. I understand I can not ask it.

Mr. ADAMSON. State your question, Mr. Thom, in my name.

Mr. THOM. The witness has detailed certain respect in which the standard of efficiency for ready use of these carriers in time of war is not sustained; for instance, in double tracks, occasioning a shortage in case of a large movement of troops to some point on the South Atlantic seaboard, requiring a great number of trains, that point only being reached by one road; that there was no way of getting the equipment out of the way so that there must be, as I understand it, some standard of efficiency maintained in time of peace which would render the carriers' facilities readily made adequate in case of war, and in that view I would like to have this question put:

While it is true that the railroads can not be expected to keep themselves all the time equal to the requirements that may, as the result of war, be made upon them, is it not also true that it is necessary in the public interest that such a standard of efficiency be maintained in time of peace that the railroads may, if war come, be readily put in condition to meet the national needs for war purposes, and that as the duty of national defense and of making war is imposed on the National Government, the standard of the carriers' efficiency in time of peace must be fixed and controlled by the National Government?

Mr. KRUTTSCHNITT. Unquestionably that is true. The carriers, when the last demand was made on them, cooperated to the extent of their ability; that is, they gave all they had for the use of the Government. I have said that under stress and high pressure that I thought there were enough freight cars now to handle the traffic that is offered, but I did not mean to say, and I do not wish to be understood as saying, that if we should become involved in war that the stresses laid on the carriers by the demands of the Government to move troops quickly, as quickly as possible, and supplies also, the carriers would not be very much overtaxed, and if we are in times of peace to prepare for war, which we have not done heretofore, we should have to have very large additions to our equipment, particularly in the way of passenger cars, also double track.

Mr. ADAMSON. I presume you noticed the breadth of Mr. Thom's question. Did you understand that, during times of peace, in prepa-

ration for war, that the Government should help the railroads to build a double track to every port?

Mr. TOWNSEND. I understood him to make an argument for Government construction of railroads.

Mr. THOM. I confined my question to the fixing of the standard of efficiency, not to national operation, but to national regulation, so as to provide what ought to be, in the judgment of the Government, the standard in time of peace, so that if war should come this essential to war making could be readily made efficient for war purposes.

Mr. ADAMSON. That language is so broad and admits of so many different interpretations that I wanted the witness to get the matter clearly in his mind. You know this question is supposed to be coming from me. I understood your question to mean that you thought the Government, in time of peace, should assist these railroads in double-tracking their systems, etc., whether that should come under ownership or by unloosening of rates, changing of regulations, loaning money, or donating money, or anything else. The idea of the Government in providing that they should liberalize and enable the railroads to make preparations for time of war in time of peace is so broad that I think it should have some specifications.

Mr. THOM. Here are transportation facilities of the country having their standard fixed by separate governmental authorities.

Mr. ADAMSON. This question is being asked in my name and it is to be charged to me. I did not understand it was to be a speech by Mr. Thom, but that he was to ask the question of Mr. Kruttschnitt, and I cross-examined Mr. Kruttschnitt to know how he understood Mr. Thom's question asked by me. If it involves a long discussion and explanation, Mr. Thom, I think it should be withdrawn.

Mr. HAMILTON. But you required a diagram of Mr. Thom's question.

Mr. THOM. What I meant is this: Here is the standard of efficiency of the American railroads now determined by a number of governmental authorities; is it in the national interests, where the railroads are such an essential part of the national defense, that that standard should be established by a number of authorities or the control be under the control of one authority?

Mr. ADAMSON. Now, you are going back to your 48 masters. I do not know a single one of your little roads that terminates at one of the ports that is subject to 48 masters. I do not believe you can mention one that operates under such a condition.

Mr. THOM. I think I can.

Mr. SIMS. I intended to ask you these questions in my first examination, but I overlooked the note. I have absolutely no information on it.

Mr. ADAMSON. Now, ask the witness the question, Judge.

Mr. SIMS. I am explaining why I did not do it before. I am apologizing.

What is the general rule as to the use of sleeping cars by the different railroad companies; what do they pay? What do they pay for the use of the cars, or what do the sleeping car companies pay for being hauled over the railroad tracks? I do not know anything about that and want to get a statement of that from you.

Mr. ADAMSON. Judge, we have had hearings on that before a sub-committee. We have reports on that in our committee, and everything on that subject.

Mr. KRUTTSCHNITT. Sleeping cars are almost universally owned by the Pullman Co. A few roads own their own, but they are very few. I think the Chicago, Milwaukee & St. Paul and the Great Northern are the only American roads that own their own sleepers. All the others rent the cars from the Pullman Co.

Mr. SIMS. Do I understand from that that the railroad companies pay the Pullman Co.—

Mr. KRUTTSCHNITT. The contracts are—

Mr. SIMS. For the use of the cars?

Mr. KRUTTSCHNITT. It is a matter of negotiation. Some contracts are more favorable to the railroads than others. I will give you, roughly, the condition of ours, as I remember it. I think we agreed with the Pullman Co. to maintain certain repairs on their cars, of the running gear and the outside of the car; that is, maintain the repairs of the vehicle as a vehicle only, and the Pullman Co. maintains the interior, the hotel or lodging-house part of the vehicle. I do not think we pay the Pullman Co., as I remember it, anything for the use of the cars. They do not pay us anything for hauling them. In other words, the hauling of the car is considered sufficient consideration for getting the use of it. When the earnings per car per annum exceed certain sums—that differs for the first-class cars and what are called the tourist cars—the railroad company is then paid by the Pullman Co. a proportion of the excess over that as compensation for hauling the car over the road.

Mr. SIMS. Well, is the weight of these Pullman cars, the sleeping cars, as great as the ordinary car?

Mr. KRUTTSCHNITT. Much greater, of course.

Mr. SIMS. Then it does require as much or more steam power or whatever may be used to haul those cars over your line as it does the ordinary day coaches or other cars?

Mr. KRUTTSCHNITT. Yes; of course.

Mr. SIMS. Is not the wear and tear on the tracks due to the heavy equipment as much or greater than that caused by the use of other cars?

Mr. KRUTTSCHNITT. It would be slightly more.

Mr. SIMS. And is not the use of sleeping cars on the increase?

Mr. KRUTTSCHNITT. I think that is true. That, however, is a matter that does not concern the public. Whatever handicaps accrue to us through the use of sleepers we have to assume on account of our duties to the public. It is our duty to provide the public with sleeping cars. We once owned our sleeping cars, and we found it very much more expensive and unsatisfactory to own them ourselves than to arrange with Pullman in some way to furnish accommodations under a contract about as outlined.

Mr. SIMS. In a way, the receipts to the railway company from the Pullman Car Co. for the use of these cars depends entirely on what you have just stated; as to a certain amount of the earnings being received as the passenger fares paid for the use of them, at the end of the year. It is not done currently as you go along?

Mr. KRUTTSCHNITT. I do not think I used the term "annually." The payments are made, as I understand, currently, perhaps quarterly or monthly, but they are adjusted finally at the end of the year.

Mr. SIMS. That is, you do not collect anything out of each passenger?

Mr. KRUTTSCHNITT. No, sir; the passenger pays the Pullman company for the sleeping accommodations.

Mr. SIMS. What additional receipts does your railroad company, as a railroad company, receive for hauling these Pullman cars?

Mr. KRUTTSCHNITT. It does not seem to be segregated in the earnings in the annual report. I expect it is under the head of miscellaneous earnings.

Mr. ADAMSON. Could you not let him write a statement and append it to the hearings, giving that in full?

Mr. KRUTTSCHNITT. I can give that to you. It does not happen to be here.

Mr. SIMS. You can send it if you want to. It does not make any difference whether it is two dollars or one dollar.

Mr. KRUTTSCHNITT. The earnings are substantial; I should say from memory perhaps six or seven hundred thousand dollars.

Mr. SIMS. What I am trying to find out myself is this, whether or not in the way of receipts and payments and expenses actually incurred the sleeping-car service is rather an expense than a profit to the railroad companies.

Mr. KRUTTSCHNITT. I can answer that in a general way by saying that there is not much in it for the railroads. When you take the expense of hauling the heavy cars and the small number of passengers they accommodate, I do not think the earnings we get from them represent any material or any substantial payment for the service. There is no money in it.

Mr. SIMS. Or the damage in wear and tear on your railroad for carrying those cars over it.

Mr. KRUTTSCHNITT. I covered that in stating the expenses of hauling them.

Mr. SIMS. In determining what the railroad receives per passenger per mile, is this sleeping-car expense to the company—is that included in it generally? Is it included in estimating; say, for instance, it costs you 1.98, or the railroads get 1.98 or 2 cents, or whatever it may be per mile for carrying a passenger; is that 1.98 intended to include what it gets for its sleeping-car service, where it gets anything?

Mr. KRUTTSCHNITT. My understanding is that any receipts from the carriage of a passenger would be put under the general heading of passenger earnings.

Mr. ADAMSON. You get the same rate out of every passenger, whether he rides in a sleeper or a day coach.

Mr. KRUTTSCHNITT. The point the judge wants to make, if I understand, is this: If we spread the sleeping-car earnings, whatever they may be, over the entire passenger-car traffic, it does contribute possibly a fraction of a mill to the average received for hauling a passenger-mile.

Mr. SIMS. But as a matter of fact, it is very small if anything?

Mr. KRUTTSCHNITT. It would be very small.

Mr. SIMS. While the expense relative to the profits and earnings received by the railroad company is relatively small as a whole, there is some loss to the railroads?

Mr. KRUTTSCHNITT. I can give you its proportion roughly. The earnings from the sleeping cars are from five to six hundred thousand dollars, from memory, and the total passenger earnings are about \$35,000,000 on our road, so that the sleeping-car earnings would be only about one-seventieth.

Mr. SIMS. If you do lose on the traffic in sleeping cars, it is as an accommodation to the public?

Mr. KRUTTSCHNITT. Yes, sir.

Mr. ADAMSON. And it is not a rebate to anybody, because everybody gets it.

Mr. KRUTTSCHNITT. That is true. Dining cars do not pay, but it is an accommodation we have to afford.

Mr. SIMS. It is an economy, however, in that the passengers do not have to stop to eat at restaurants.

Mr. KRUTTSCHNITT. It is an economy to the passenger; he gets to his destination quicker.

Mr. SIMS. There is some economy to the railroad company in not having to stop the trains to allow him to eat.

Mr. KRUTTSCHNITT. In this matter you have to take the plusses and minuses—

Mr. SIMS. Oh, of course, there is no doubt about that; but I wanted to know whether or not the sleeping cars and the sleeping-car expenses were a profit or a benefit to the railroads as a general thing and in a general way, and like the stations the number of sleeping cars that will be operated in the future will be an increasing burden on the railroad companies instead of a profit. That is all I wanted to find out about.

Mr. KRUTTSCHNITT. It is an increasing burden. I can not give you the gross earnings per mile and the expenses per passenger mile, because we have never figured it out; and from the conditions of the problem you will see that a great many assumptions and estimates will have to be made. It will be only roughly approximate if made at all.

Mr. SIMS. And it does not figure to any great extent to what you get per mile per passenger?

Mr. KRUTTSCHNITT. I have just stated—

The VICE CHAIRMAN. The Chair wishes to express to you the thanks and appreciation of the committee and the gratitude of the committee and their good wishes.

Mr. KRUTTSCHNITT. I thank you very much, Mr. Chairman and gentlemen of the committee.

The VICE CHAIRMAN. Mr. Thom, the committee is ready for your next witness.

Mr. THOM. Mr. Chairman and gentlemen of the committee, I should like to introduce Judge Marcus P. Knowlton, of Massachusetts. I will say, in introducing this gentleman, that he has had a very large experience in public matters, having passed all through the various legislative bodies, from the common council of Springfield, through the house of representatives and senate of Massachusetts; he has been justice of the superior court of Massachusetts from

1881 to 1887, and succeeded Justice Holmes as chief justice of the supreme judicial court of Massachusetts in 1902, and held that office until September, 1911. He also was appointed by the United States Department of Justice—at least, recommended by it—to the Federal court in the dissolution proceedings between the New York, New Haven & Hartford Railroad and the Boston & Maine Railroad, and he is chairman of the board of trustees having control of the stock of the Boston & Maine Railroad and the dissolution of those properties.

We desire that Judge Knowlton give his experience in connection with that matter, and, on account of his eminent judicial and professional position, we have asked him to present also an argument on some of the law questions you have to consider.

**THE VICE CHAIRMAN.** We will have an hour and a half before adjournment. Can Judge Knowlton complete his direct statement in that time?

**MR. THOM.** He says he can complete his direct statement in three-quarters of an hour.

**THE VICE CHAIRMAN.** We shall be glad to hear you, Judge. Under the rule of the committee you are not to be interrupted until you complete your direct statement, and you have an hour and a half.

**STATEMENT OF MARCUS P. KNOWLTON, CHAIRMAN OF THE BOARD OF TRUSTEES, BOSTON & MAINE RAILROAD, 391 STATE STREET, SPRINGFIELD, MASS.**

**MR. KNOWLTON.** Mr. Chairman, the Boston Railroad Holding Co., incorporated in Massachusetts by the Statutes of 1909, chapter 519, acquired and held, and still holds; a majority of the capital stock of the Boston & Maine Railroad. The New York, New Haven & Hartford Railroad Co. took and held most of the stock of the Holding Co., and in this way had a controlling interest in the Boston & Maine Railroad. A suit was brought by the United States Government to terminate this control, on the ground that it was in violation of the Sherman antitrust law. A decree was entered by agreement of the parties, that the New York & New Haven Co. should assign and transfer all its stock in the Holding Co. to five trustees, who were to hold its stock, and through their holding were to control a majority of the stock of the Boston & Maine Railroad, and ultimately were to sell it conformably with the public interest, for the benefit of the New York & New Haven Co., in such a way as to end the alleged monopoly. Although I am the chairman of these trustees and the president of the Boston Railroad Holding Co., and a director of the Boston & Maine Railroad, I do not come here officially, nor in any representative capacity. In anything that I may say, I speak only for myself, I propose to present a few facts from my personal experience, upon which, with others that will be before you, you may find such opinions as seem to you correct.

I also ask permission to present some considerations on the question whether it is within the constitutional power of Congress to provide that interstate commerce, conducted over railroads, shall be carried on by companies incorporated under Federal laws.

In October, 1914, when the Federal trustees were appointed, they found the Boston & Maine Railroad a corporation with a capital stock of \$41,655,190, and owning a bonded debt of \$43,338,000, and operating and managing a system of railroads comprising 25 corporations, whose lines extended into five States—Maine, New Hampshire, Vermont, Massachusetts, and New York—and the Dominion of Canada. Most of these railroads it operated under leases, many of them for long terms of 99 years or thereabouts, and besides its liability to pay its floating debt of about \$24,000,000, in addition to its bonded debt, it had guaranteed in some of these leases the payment of large bonded debts of lessor corporations. For about two years the corporation, without making dividends, had been unable to earn enough to pay its fixed charges, and the deficit of earnings below the fixed charges during the fiscal year which had just ended on June 30, 1914, was \$2,044,742.

Many of the leases were made when the net earnings of railroads in New England were much larger than they have been in recent years. Two years ago all the trustees and, so far as I know, all the directors were confident in the opinion that the corporation could not go on and serve the public properly without a reorganization that should diminish its fixed charges and give it better credit. The Boston & Maine Railroad is incorporated under different special charters in Maine, New Hampshire, and Massachusetts, having but a single capital stock and a single board of directors, and conducting all its financial affairs as a single corporation. At the same time it is a domestic corporation, regularly incorporated in each of the three States, and subject to the peculiar legislation, general and special, of each of these States in which its railroad is located; and in this respect it is three different corporations, each without authority superior to that of the others, as neither of the incorporating States has any authority or control over either of the other incorporating States. Other railroads belonging to this system are in Vermont, New York, and Canada, and governed by the laws of those places.

Everybody recognizes the fact that it is for the interest of the public, as well as for the interests of the several corporations belonging to the system, that these corporations, or at least most of them, should be kept together. It has also been the general if not the universal opinion of those who have studied the subject that no practicable, desirable form of reorganization can be adopted without special legislation to authorize it in Maine, Massachusetts, and New Hampshire, if not in the other jurisdictions also. It was the hope of the directors of the Boston & Maine Railroad and of the Federal trustees that substantially uniform permissive legislation might be obtained in these three States. After extended hearings and much discussion statutes were enacted in Maine and Massachusetts in the year 1915 giving such authority; but these statutes differ materially in their provisions, and it will be very difficult, if not impossible, to proceed under them without the enactment of amendments. Massachusetts Acts of 1915, chapter 380; Maine Acts of 1915, chapter 186. In New Hampshire it was impossible to obtain any practicable statute in aid of the project.

In September of this year the corporation was put into the hands of a receiver. I ought, however, to say that in part from the increase

of traffic connected with the foreign war and the different kinds of business that have affected the earnings of many of the great railroads of the country, and largely from the practice of strict economy in the operation of the railroad, its net earnings have greatly increased lately, so as to produce this year a substantial surplus above the fixed charges.

This corporation, being directly subject to the legislation of three different States, must make returns to the public-service commissioners of each of these States and obey their orders. It is, of course, subject to the jurisdiction of the United States Commerce Commission. Each of these tribunals has jurisdiction over the general as well as the local affairs of the corporation. In cases of a conflict in the laws passed by the legislatures of the different States, or in the orders of the several commissions, there would be, in some matters, great doubt as to which should control. Statutes and orders that are only local in their effect are no doubt binding to the exclusion of others as to permanent local conditions within the State. Those that are intended to affect the corporation generally, like a change in the amount of its capital stock, or regulations as to the issue of stock, or provisions limiting or regulating the corporate indebtedness, if in conflict with the law of another State where the company is also incorporated, give rise to doubts and uncertainties which are most troublesome.

In the case of *Attorney General v. New York, New Haven & Hartford Railroad Co.* (198 Mass., 413-417), the defendant corporation was incorporated in Massachusetts, Rhode Island, and Connecticut, and it operated railroads under leases elsewhere. Its acts in question in the case were held invalid under the laws of Massachusetts and were set aside, although they were within the general authority given to the corporation by the statute in Connecticut. These acts directly affected local conditions in regard to other corporations in Massachusetts. The court gave no intimation as to what the result would have been if the acts had had no special local application.

In reference to a possible reorganization by the consolidation of corporations or the transfer of the property and franchises of the selling corporations to the purchaser, it is held in New Hampshire that the legislature can not constitutionally authorize such a change, or even the lease of one road to another, by action of the directors and stockholders of the corporations, however large the majority, without providing for a valuation by a jury of the stock of the objecting minority stockholders and a payment for it in cash at the valuation by the acquiring corporation. (*Dow v. Northern Railroad*, 67 N. H., 1.) Statutes have been enacted in that State accordingly.

In Maine and Vermont there are decisions and legislation tending somewhat in the same direction, without carrying the doctrine quite so far. (*State v. Maine Central Railroad Co.*, 66 Me., 488; *Stevens v. Rutland & B. Railroad Co.*, 29 Vt., 545.) In Massachusetts and New York the law is held otherwise by the courts. (*Hale v. Cheshire Railroad Co.*, 161 Mass., 443; *Hart v. Ogdensburg & Lake Champlain Railroad Co.*, 89 Hun., 316.) What rule shall be applied to such conditions in cases of a general reorganization is a question of great difficulty and importance. In the same

reorganization it would be unjust and impracticable to apply one rule in one State and a different rule in another State.

The recent statutes enacted in Maine and Massachusetts authorizing a reorganization, and the one reported and chiefly considered in New Hampshire, all contain a provision subjecting the directors of the Boston & Maine Railroad to punishment by fine or imprisonment for a violation of the statute. As the two statutes differ from each other in important particulars, it seems that action under either of them would involve a choice by the directors of the State in which to suffer imprisonment for compliance with the law of the other State.

I ought to say that in connection with continued effort to obtain a reorganization of the Boston & Maine system a renewed attempt to provide a permissive act in New Hampshire is now being made before the legislature in session there. There is also a bill in the Maine Legislature now in session to obtain an extension and modification of the Statute of that State enacted in 1915. If a reorganization is accomplished, we shall still be subject to different codes of laws in the different States and to the orders of different tribunals seeking, each in its own way, to regulate the public service.

It is a long time since statutes were first enacted in New Hampshire forbidding an increase of rates upon certain railroads belonging to the Boston & Maine system, and it has been contended that these statutes were not only prohibitive of an increase as to interstate commerce but also of action of the Interstate Commerce Commissioners for the increase of rates in interstate commerce. In other States there has been legislation as to rates which was unjustly discriminating in its effect upon interstate commerce.

In Massachusetts, about two years ago, when the New York, New Haven & Hartford Railroad Co. sought to increase its capitalization by issuing \$67,000,000 of convertible bonds, and the issue had been underwritten and had been assented to by the public authorities of Rhode Island and Connecticut, the prohibition of the issue of bonds of this class by the laws of Massachusetts prevented this increase and greatly interfered with the plan of the corporation to provide for the proper transaction of the public business. In other States burdensome conditions have been imposed upon proposed plans of other railroads for providing necessary capital to the detriment of commercial interests in neighboring States.

With the enormous growth of business in the United States in the last few decades it has for a long time been becoming more and more evident that the only convenient and economical way of conducting interstate commerce over railroads is by combinations of the small and short railroads into extended systems, each under a single general management, covering long distances and classified continuous movements, with as few changes of route and train as possible. Such systems can not be bounded by State lines. Not only in the densely population States have the railroads been brought together into such systems by leases or otherwise, for economical management, but in the great States of the West we find such combinations crossing the mountains and plains, without reference to the boundaries of States.

In amount and importance, especially when we consider the long distances of its transportation, the interstate commerce over railroads

in the United States very greatly exceeds the intrastate commerce over these railroads. The Interstate Commerce Commission has prescribed elaborate regulations of interstate commerce over existing railroads; but Congress has never attempted to provide the instrumentalities for carrying it on, or directly to authorize the creation of such instrumentalities that should derive their sole authority, under the Constitution, from the Government of the United States. If the corporations that are to engage in this business through the operation of railroads were directly chartered by the United States, it would relieve the public from the great difficulty and expense of dealing with different jurisdictions having conflicting laws in the establishment and maintenance of these instrumentalities, and from the labor and cost of subjection to the requirements of numerous commissions, all supervising the same matters, which can be properly and completely supervised by one, and from the official salaries and expenses of the members of unnecessary corporate organizations. It would relieve from most of the difficulties in the special cases to which I have referred. It would save the necessity of such a statute as was held unconstitutional in *Central Georgia Railway v. Murphey* (196 U. S., 194), which required a common carrier receiving goods for transportation over its own line and connecting lines, if the goods were subsequently lost or damaged, and if it would relieve itself from liability to the consignor, to furnish evidence which would enable him to fix the liability upon the carrier primarily responsible for the loss. If there was a Federal corporation extending through the different States it would be unnecessary for the owner to find out and prove affirmatively where and how the loss occurred.

It is evident that the creation of Federal railroad corporations to act as carriers in interstate commerce would have many advantages over the present method of providing separate railroad corporations in the several States where the railroads are located. Whether there should be legislation to authorize or compel the enjoyment of these advantages is a question for Congress to answer.

Has Congress, in the exercise of its power to regulate interstate commerce between the States, a constitutional right to provide railroad corporations incorporated under Federal law for the transaction of the business? If so, it naturally follows that it may require all interstate commerce conducted over railroads to be carried on by such corporations. An act might merely permit incorporation under the Federal law, although such an act would be of little or no practical value, or it might provide that railroad corporations incorporated by the States should not engage in interstate commerce after the expiration of a prescribed time; or it might require a certificate of authority to engage in it from the Interstate Commerce Commissioners; or the regulations might be more or less strict in other ways.

In the great case of *McCulloch v. Maryland* (4 Wheat., 316) it was decided that Congress might constitutionally establish a United States bank for the transaction of the financial business which was to be done in its interest and under its supervision. Said Chief Justice Marshall:

Although among the enumerated powers of Government we do not find the word "bank" or "corporation," we find the great powers to lay and collect taxes, to borrow money, to regulate commerce, to declare and conduct a war.

and to raise and support armies and navies. The sword and the purse—all the external relations and no inconsiderable portion of the industry of the Nation, are intrusted to its Government. The power being given, it is the interest of the Nation to facilitate its execution. It can never be their interest and can not be presumed to have been their intention to clog and embarrass its execution by withholding, the most appropriate means. Throughout this vast Republic, from the St. Croix to the Gulf of Mexico, from the Atlantic to the Pacific, revenue is to be collected and expended, armies are to be marched and supported. \* \* \* Is that construction of the Constitution to be preferred which would render these operations difficult, hazardous, and expensive? Can we adopt that construction, unless the words imperiously require it, which would impute to the framers of that instrument, when granting these powers for the public good, the intention of impelling their exercise by withholding the choice of means? The Government which has the right to do an act must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select any appropriate means, that the one particular mode of effecting the object is expected, take upon themselves to prove the exception. \* \* \* But the Constitution of the United States has not left the right of Congress to employ the necessary means for the execution of the powers conferred on the Government to general reasoning. To its enumeration of powers is added that of making all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States or any department thereof. \* \* \* To employ the means necessary to an end is generally understood as employing any means calculated to produce the end, and not as being confined to those single means without which the end would be entirely unattainable.

In the most explicit terms, the Constitution gives to Congress the power to "regulate commerce, \* \* \* among the several States." (See *Gibbons v. Ogden*, 9 Wheat., 1.) This includes the right to prescribe the means and instrumentalities by which it shall be carried on, if in the opinion of Congress, it is important or desirable so to do. As Congress could decide that a bank under a Federal charter was an instrumentality for use in conducting the financial business of the Government, so it may decide that railroads incorporated under a Federal law, extending across State lines, furnish a desirable means of carrying on interstate commerce. The power to regulate such commerce in any way that seems to Congress reasonable and proper is as complete as the power to provide for the management of the finances of the country, and it includes the determination of the means and instrumentalities to be used in the business.

The language of Chief Justice Marshall, quoted above, and its doctrine, more fully set forth in other parts of the opinion, have been reaffirmed many times by the Supreme Court of the United States, and are the law to-day. They seem to me fully to cover the question which we are considering. They have been definitely applied to questions arising under the commerce clause of the Constitution, and are reiterated with emphasis in the opinion of the majority of the court in the Northern Securities case (193 U. S., 197, 336, 344, 350, 253). In giving an opinion of the minority in that case, Mr. Justice White said (p. 369), "that if the end to be accomplished is within the scope of the Constitution, all means which are appropriate, and which are plainly adapted to the end, and are not prohibited, are constitutional." This language seems directly applicable to the present situation. He also said (on p. 393):

True, the instrumentalities of interstate commerce are subject to the power to regulate commerce, and therefore such instrumentalities, when applied in interstate commerce, may be regulated by Congress, as to their use in such commerce.

Much of the argument of this part of the opinion of the minority relates to the proposition that ownership of stock in corporations engaged in interstate commerce is not interstate commerce, and the argument has no tendency to show that Congress, under its right to regulate interstate commerce, may not prescribe the means and instrumentalities by which the business of such commerce is to be carried on.

There is a peculiar similarity between the question in *McCulloch v. Maryland* and that which we are now considering, inasmuch as the constitutional power of Congress considered in each case is the power to charter a Federal corporation to do the work which Congress may control and regulate. It seems that the principle was applied to the chartering of the corporations for the promotion of interstate commerce which are referred to in *California v. Central Pacific Railroad Co.* (127 U. S., 1, 39), and *Pacific Railroad Removal cases* (115 U. S., 2, 16, 18). (See also general doctrine in *Houston & Texas Railway v. U. S.*, 234 U. S., 342. *Texas & Pacific Railway v. Rigby*, 241 U. S., 6, 23.)

If Congress should decide that such railroad corporations should be established to engage in interstate commerce, the question whether its decision was wise or unwise could not be considered by the court. There seems to be no doubt that the kind of corporation, in its origin and control and in the extent of the field that it may cover, has such a direct relation to the business of interstate commerce as may come within the regulating power of Congress that it includes everything directly involved in such commerce. This being so, it is settled by many decisions that the final determination of Congress to act or not to act, or to act in one way and not in another way, within its constitutional domain, is not subject to review by the court.

Personally I can not doubt the constitutional power of Congress to charter railroad corporations to engage in interstate commerce and to prevent railroads not so chartered from engaging in such commerce after a certain date if it chooses so to do.

If I am right in this conclusion, does it make any difference that at the time when this constitutional right is first sought to be exercised by Congress the country is traversed by railroads used in interstate commerce, owned by corporations which were chartered by the States? I think it does not. It seems to me that the proposition stated to the committee by Mr. Thom is sound, that everyone who engages in interstate commerce is bound to know that he and his property are subject to the right of Congress to regulate interstate commerce at any time, which right includes constitutional authority to declare that interstate commerce conducted over railroads shall be conducted only over railroads operated under Federal charters. This, in a possible case, might involve great diminution, or even the destruction of the value of a railroad in a State, by the construction of another railroad under a Federal charter, if Congress should go to the extreme limit of its power without making a provision for the utilization of existing railroads.

Such possible congressional action would test the constitutionality of the legislative act to the utmost, for courts would be reluctant to permit the unnecessary destruction of valuable property, and they

would consider carefully the question whether any material benefit could come from conducting interstate commerce over railroads operated under Federal charters instead of conducting it over State railroads. I think the courts would be obliged to say that in the organization, management, control, and regulation of Federal railroad corporations engaged in interstate commerce advantages might be found over the effect of similar dealings with State railroads such as to bring the subject within the field of constitutional regulation of interstate commerce. If this result was reached the wisdom or folly of congressional action in a particular case would be a subject with which the courts could not concern themselves.

It is not to be supposed that Congress would ever put the question to this extreme test by legislating in a way that would involve the destruction of great public works. National legislators can be trusted to do their duty in providing for the conservation of valuable property. The legislation should open a way for the owners of State railroads, valuable for use in interstate commerce, to sell their property to the new Federal corporation, or to have it taken over at a valuation, subject to the supervision and approval of the governmental tribunal created by Congress to pass upon the establishment and organization of Federal railroad corporations.

It might be provided that, subject to such approval, stock in the State railroad companies might be exchanged for stock in the Federal corporation, upon proper terms, and that ownership of the property of the State corporation should follow ownership of the stock, and that, through such purchases or exchanges, control of the State railroad might be acquired by the new corporation. These things should be permitted only after the voluntary action of the stockholders of the State railroad company by a majority vote, or a two-thirds vote; while the new corporation should be compellable, in a proper case, as a condition of its organization, to take over upon reasonable terms the stock or property of the State corporation.

The question arises whether objecting minority stockholders of a State railroad corporation could be bound by a two-thirds vote of the stockholders in such a case. If the answer depended upon the very elaborate opinion of the court in *Dow v. Northern Railroad* (67 N. H., 1), it would be in the negative; if it depended upon the decision in *Hale v. Cheshire Railroad Co.* (161 Mass., 443), it would be in the affirmative. The decisions in Vermont are similar to those in New Hampshire. *Stevens v. Rutland & B. Railroad Co.* (29 Vt., 545). Those in Maine and New York follow more nearly the cases in Massachusetts. *Waldoborough v. Knox & Lincoln Railroad Co.* (84 Me., 469). *State v. Maine Central Railroad Co.* (66 Me., 488). *Hart v. Ogdensburg and Lake Champlain Railroad Co.* (89 Hun., 316).

The underlying question in every such case is, "What is the contract that stockholders impliedly make with one another when they become members of a railroad corporation?" It is to be remembered, first, that for many years, beginning soon after the decision in the *Dartmouth College* case, charters of corporation in almost all of the States have by statute been made subject to amendment, alteration, or repeal, and the stockholders, when they join the corporation, agree to be bound by applicable legislative provisions by way of

alteration or amendment. Of course, such alterations must be germane to the subject. Legislative authority which provides for a change of form of incorporation, if the stockholders desire it, from a State charter to a Federal charter, under which the same kind of business may be done, over the same line extended to include additional distance into a neighboring State, is plainly promotive of the original general purpose of the corporation. It is an enlargement and extension of the same general kind of business that formerly was done, for the same objects, namely, the service of the public in transportation and the acquisition of gain from the compensation received for it. It is no greater a change in the relations of the stockholders to one another, or to the enterprise in which they are engaged, than is the leasing of one railroad to the owners of another railroad for an extension of the line. If the arrangement is such that the grantor or assignor no longer has an interest in the business, but parts with his property finally for a pecuniary consideration, this, so far as he and his associates are concerned, is like the winding up or liquidation of a corporation. There is no doubt that the body of the stockholders, under legislative authority, have a right to bind the minority by their vote to wind up the affairs of the corporation.

All the tendencies of social and business life in recent years are in favor of liberality in the management of such enterprises. It would be a very narrow construction of the implied contract between the members of a railroad corporation, when they have organized to serve the public and to make money by running a railroad between two points, and have impliedly agreed that a majority may control in the management of their business, and when the legislature has declared that their business may be extended by taking a lease of a connecting line, to say that such an extension is so at variance with the general purpose and policy of the corporation that the majority can not bind the minority in voting for it. If such a construction could have been given to such an implied contract in the early days of railroads, it would be utterly at variance with the demands of business and the methods of management of railroads in these times.

Upon a question of this kind, which relates primarily to a mere change of form and which does not affect adversely public business or the public interests and which, so far as the State corporation is concerned, is nothing more than a liquidation of it, with an arrangement that the service of the public shall be continued, it can make no difference that the formal authority under which the stockholders of the corporation make these changes comes from the Government of the United States, exercising its powers under the commerce clause of the Constitution, instead of from the legislature of the State. The authority is ample, and the stockholders exercise their own rights of property as an organization, all implied restrictions upon them having been removed by authorized congressional action. There are no State laws that prevent them from taking advantage of the conditions created by Congress affecting their property.

There is no occasion for the exercise of the right of eminent domain by taking their property for a public use. There is simply the control and management of the property of the corporation by the stockholders and owners, within the general purpose for which

the corporation was organized, a control which is permitted, in the particular form in which it is exercised, by the removal of all possible restrictions under a favoring enactment of the supreme legislative authority acting in its own domain. If there is doubt as to the correctness of the last propositions, all difficulty can be removed in any case by a permissive act of the State legislature.

I can not believe that the extreme doctrine of *Dow v. Northern Railroad* will ever be adopted by the Supreme Court of the United States and applied to a case like the leasing of a connecting line of railroad by one railroad corporation to another.

I shall be very glad, gentlemen, to answer any questions, if I can.

Mr. SIMS. The chairman is not present, but the agreement was made that Mr. Hamilton had the right of way now.

Mr. HAMILTON. I had the right of way before.

Mr. SIMS. But you yielded to me.

Mr. HAMILTON. I do not care to ask any questions at this time.

Mr. SIMS. You mean during this appearance?

Mr. HAMILTON. Unless something should develop during the course of the examination.

Mr. SIMS. Mr. Esch will come next.

Mr. ESCH. Your argument in favor of national incorporation, judging from your address, is largely based upon your experience as one of the holding committee of the Boston & Maine Railroad Co., and its financial distress in recent years.

Mr. KNOWLTON. I should hardly say my opinion is largely based on that. My opinion is based on broader and more general considerations, but my experience to which you have referred has been illustrative, in a very emphatic way, of the difficulties of the situation, and it seems to have strengthened, perhaps, by bringing home, particularly, the views which I presented.

Mr. ESCH. Have you entertained the views which you now express, with reference to national incorporation, prior to your experience in connection with the Boston & Maine?

Mr. KNOWLTON. I think so, although I had not given special study to the subject until I had this particular duty, which has forced the study on me.

Mr. ESCH. You desire, as chairman of that committee, to get the Boston & Maine on a working basis, and it has required you to appear before the legislatures of the several States, in order to get assent to your legislative program?

Mr. KNOWLTON. I have appeared before the legislatures of three of the four States which are interested. It includes the State of Vermont, wherein the Boston & Maine Railroad is not incorporated.

Mr. ESCH. I think you stated whereas the bills that you had advocated in two of the States were reasonably satisfactory, they were not satisfactory to the Legislature of New Hampshire.

Mr. KNOWLTON. The Legislature of New Hampshire refused to pass any act in its session two years ago. It has had another session since.

Mr. ESCH. You are now seeking legislation in the present session?

Mr. KNOWLTON. Yes, sir.

Mr. ESCH. Along that line?

Mr. KNOWLTON. There are a number of New Hampshire railroads that are active in this business, and the Boston & Maine has been

awaiting such action as they may accomplish, because we think they have a purpose similar to our own in that respect.

Mr. ESCH. As I recollect your statement, you say that prior to 1916 the Boston & Maine was operated at a loss.

Mr. KNOWLTON. The deficit for the year ending June 30, 1914, was between two and three millions of dollars, without dividends.

Mr. ESCH. In the last year you developed a comfortable surplus?

Mr. KNOWLTON. A surplus. I do not know whether it is a comfortable surplus.

Mr. ESCH. I think that was the language you used.

Mr. KNOWLTON. It is a substantial surplus.

Mr. ESCH. If that surplus should be continued into 1917—into the 1917 operating year—would it enable you to refinance the Boston & Maine without the aid of the State legislatures?

Mr. KNOWLTON. I suppose our committee, as a committee, has no power except through the ordinary machinery of the railroad, which is the directorate of the railroad. Of course our desire would be to refinance the railroad in a strong way, if we could, but I think every member of the board of directors is of the opinion that from the present outlook we could not expect to refinance successfully unless we could have a reorganization. A part of the trouble is that the Boston & Maine Railroad is not a great system. The capital, which I stated, you see is small, and it has leased a large number of corporations, and when the times are a little hard and the earnings do not come the loss all tumbles right down on the Boston & Maine Railroad, which is bound to pay these rentals in bad and good times.

Mr. ESCH. Do you consider those rentals, in the line of experience of recent years, rather high?

Mr. KNOWLTON. I think as a class, taken together—there is a great difference in them in that particular—they are very high. Other people think differently, I know.

Mr. ESCH. These leases you say run for a period of 99 years or thereabouts?

Mr. KNOWLTON. Yes, sir.

Mr. ESCH. So that those obligations under your leases will run for many years yet to come?

Mr. KNOWLTON. Yes.

Mr. ESCH. Under your reorganization did you hope to get rid of those obligations?

Mr. KNOWLTON. The plan of reorganization which has been most approved involves the taking in of these railroads into a consolidated corporation with the Boston & Maine and giving them preferred stock at rates similar to their rentals or equivalent to them. A plan has been proposed and agreed to by various parties to give them their dividends in preferred stock whenever the earnings would permit of it.

Mr. ESCH. Was the Boston & Maine at one time a subsidiary of the New Haven?

Mr. KNOWLTON. Yes; well, I do not know whether that is the word. The New Haven got control of it through the Boston—

Mr. ESCH. By stock ownership or how?

Mr. KNOWLTON. The Boston Railroad Holding Co. was created, and it acquired a majority of the stock and holds it to-day. It was

a subsidiary of the New Haven Railroad, and that is the way in which the New York & New Haven Railroad controlled the Boston & Maine when we were appointed.

Mr. ESCH. During such holding by the New Haven road were there any net revenues of the Boston & Maine, or did it run behind, as it did prior to last year?

Mr. KNOWLTON. It ran behind, certainly, the last part of the time. I am not quite sure whether there were any net earnings during the earlier part of the time, because I can not fix the time.

Mr. ESCH. Did that running behind of the Boston & Maine add to the troubles of the New Haven which brought on the crisis on that road?

Mr. KNOWLTON. Not in any very material degree. Perhaps it was one of the elements, but not a great element.

Mr. ESCH. Have you read ex-Secretary Olney's letter to Mr. Thom. printed in the early part of the hearings?

Mr. KNOWLTON. No; but I happened to be before the committee when Mr. Thom read the letter from Mr. Olney, which is the one I suppose you refer to.

Mr. ESCH. What is your opinion of the plan therein suggested?

Mr. KNOWLTON. I never have seen the letter or any copy of it. I only heard the reading of it at that time. With the highest respect and regard for Mr. Olney, at that time it seemed he had not worked out the best way of dealing with such a subject.

Mr. ESCH. I have not read it recently myself, but if I recollect correctly he provided for some system of condemnation of the stock.

Mr. KNOWLTON. I think so.

Mr. ESCH. In order to get rid of objecting minority holdings which might sometimes interfere with the ease of transition from State to Federal control, under your plan, how do you get rid of that?

Mr. KNOWLTON. I do not think there is any difficulty in the law with that. The State of New Hampshire, in the case to which I have referred, decided that the legislature could not constitutionally authorize the lease of one railroad by another, which would bind the minority stockholders, even if the vote was ever so large, whether one-third or two-thirds. My belief is that that decision is not good law, and will not be considered good law anywhere else in the United States. The decision in Massachusetts is to the contrary. I think the reasoning, when you reflect on it—I think that reasoning and authorities, as far as I happen to know of any, are against that doctrine. It is true that the legislatures of some of the States—New Hampshire, of course, primarily—and some of the others to save questions have legislated so as to avoid that difficulty in some of their past acts, but my own belief is that that difficulty is not a very serious one.

Mr. ESCH. You do express the opinion that Congress had the right to establish this Federal corporation, which is to take over the stocks of the State corporation, and that Congress can fix a definite time within which that transfer should be made, and that thereafter a common carrier should no longer lawfully engage in interstate commerce?

Mr. KNOWLTON. If I understand your question aright, my answer is in the affirmative. I understand Congress has the right to regu-

late interstate commerce, which includes the power to establish Federal corporations to do all the business in interstate commerce. If it has that power it must necessarily mean it can exclude the further transaction of such business by a State corporation. I do not think for one moment you gentlemen would pass a statute to do that without making some provision to enable these people who own State corporations to avail themselves of their property, and so I have indicated some of the ways in which it can be done.

MR. THOM. In your question you spoke of the Federal corporation taking over the stock—

MR. ESCH. He referred to taking over the stock of the State corporations.

MR. THOM. My understanding was not that the Federal corporation should take over the stock of the State corporation, but that there should be a requirement that the owners of the State corporations reincorporate under the Federal law, and when they did that, by virtue of the statute itself, the property and assets of the State corporation should pass to the Federal corporation, and not the stock; that should remain in the hands of the owners.

MR. ESCH. The original holders.

MR. KNOWLTON. I did not elaborate it quite that way. My idea was that Congress would provide for the establishment of Federal railroad corporations, and in connection with that would provide an arrangement whereby the Federal corporation, as a condition of its being, should be obliged to take over the stock of the State railroad corporation that wished to be taken over and voted to be taken over by a proper tribunal to be created to deal with this subject.

MR. ADAMSON. Don't you think that that idea would be far easier and better if you want a Federal corporation for interstate transportation, to enact a law to authorize new companies, and at the same time to authorize the State corporations to change when they desire, and let it be voluntary?

MR. KNOWLTON. That would come very nearly to my view. The authorization of new instrumentalities is a part of the plan.

MR. ADAMSON. I think it would be more agreeable, reasonable, intelligent, and far more likely to be constitutional, as a proposal of this committee.

MR. KNOWLTON. I should contrive some way to give the State corporations the right and power, upon a proper vote, to have their rights available—to get the benefit of them in one way or another.

MR. ADAMSON. I can understand how that might be constitutionally, reasonably, and easily worked out.

MR. KNOWLTON. It seems to me so.

MR. DOREMUS. Judge, I was called out of the room just as you began your reference to the case of McCall against Mills. Do I understand you to cite that case as authority to settle the authority of Congress to provide for the Federal incorporation of the railroads?

MR. KNOWLTON. Indirectly, yes; and perhaps I ought to say directly. Yes; that case establishes, in the strongest terms, the power of Congress to establish a Federal corporation to transact the business which ought to be supervised and controlled and managed by the United States, and while that relates to Federal banks, I say this, that the same doctrine has been directly and specifically applied to interstate commerce.

Mr. DOREMUS. I have not had occasion to read that case in a long time, but my recollection of it is—and you will correct me if I am wrong in my recollection—that among the questions involved was the power to tax this national bank.

Mr. KNOWLTON. That is in the case.

Mr. DOREMUS. And the court held that the national bank was an instrumentality of the Government and as such was not subject to taxation; in other words, they put the national bank, as it then existed, in the same category with the United States mint and customhouse, the post office, and other instrumentalities of the Government. Is that your recollection of it?

Mr. KNOWLTON. Well, the fundamental question, the proposition for which I cited the case, the argument of Chief Justice Marshall, which I have quoted, relates to this fundamental question, whether the establishment of such a Federal corporation to transact the banking business for the United States is legal and valid under the Constitution, and that is the only part of the case with which I dealt particularly. All the rest to which you refer is there, but that is rather incidental.

Mr. DOREMUS. You do not wish the committee to infer that a railroad corporation or railroad company incorporated under the Federal law would be an instrumentality of the Government?

Mr. KNOWLTON. I should not, for myself, have the corporation a corporation created directly by a special act of Congress, but under legislation which would authorize it and which might subject it to taxation.

Mr. ADAMSON. That is the way the national banks are authorized, is it not?

Mr. KNOWLTON. Substantially, I think.

Mr. DOREMUS. In the letter of Mr. Olney to which Mr. Esch refers and which Mr. Thom has inserted at page 113 of this printed argument, Mr. Olney makes these suggestions regarding the transfer of the property and rights of the railroad companies organized under State laws to the corporations that would be organized under the Federal statute—

4. It can not be doubted that a railroad corporation created by a national charter is an apt instrument for the carrying on of national transportation and that the organization of such a corporation with all appropriate powers and duties is a fit subject for treatment under the commerce power.

5. Nor is it to be doubted, because ample experience has shown, that in this matter of national transportation by railroads, public policy and the public welfare are at one with the law of the country. They imperatively require that the subject should be dealt with in all its phases by a single authority which can be no other than the Nation itself. The mixed jurisdiction over the subject now prevailing—the States exercising a part mostly through State charters and the United States a part, mostly through the commerce power—is thoroughly archaic, originated before the true scope of the commerce power was generally understood, and has resulted in a serious waste and inefficiency in railroad operation which is at once matter of public notoriety and public scandal.

6. In view of the settled law of the land as respects the national commerce power, as by virtue of this the United States practically undertakes to exercise the power for the benefit of the several States and of all the people, and as transportation by railroad is within that power and is to-day in a condition most unsatisfactory to the private owners of the railroads, as well as seriously prejudicial to the national interests, the question is of the remedy for that condition.

It may be claimed that Government ownership of all national railroads is the only true and adequate solution, a claim which time and sufficient experiment may show to be well founded. Yet Government ownership would have political bearings of such depth and moment as ought to prevent its consideration until and unless it is established that there is no way out. It is best to assume, in the first instance, therefore, that there is some other way out; that the question is essentially administrative rather than political; that it concerns our national housekeeping rather than the structure and stability of the house itself. \* \* \*

Fourth. Stockholders of the old corporation, common or preferred, to be offered common or preferred shares or such other interests in the new corporation as, in the judgment of the organizers, will make their interests in the new equivalent to their interests in the old.

Fifth. Share in the old corporation to be purchasable for the new corporation by the organizers on terms which they may deem fair and not injurious to other parties to the proposed corporation; in the event of such purchase shares of the new corporation to be sold by the organizers to an amount sufficient to enable them to pay the agreed price.

Sixth. Shares of the old corporation not obtainable by exchange or purchase as above provided to be taken by the new corporation at its option under the power of eminent domain at a price fixed by a court of competent jurisdiction, or by such court and a jury at the election of the stockholder.

Do you care to give the committee the benefit of your opinion as to those suggestions?

Mr. KNOWLTON. I think that is all possible and all practicable in a way, but I think that his provision as to taking stock under the power of eminent domain is unnecessary, and that a statute could be passed such as would bind the minority and objecting stockholders to take the value of their stock or take the price at which the stock should be sold by a vote of two-thirds, just as they would in winding up the corporation take what would come from it.

Mr. DOREMUS. He also makes this suggestion:

The organizers to operate the national railroad concerned with all the powers of receivers of an insolvent railroad until a majority of the capital stock of the new corporation shall have been issued as hereinbefore authorized.

What would you say as to that?

Mr. KNOWLTON. Well, I have not undertaken to work out in such elaborate detail all the procedure for accomplishing the general purposes which I think ought to be accomplished, as Mr. Olney did in his letter, and I do not know whether I fully appreciate that particular part which you just read.

Mr. DOREMUS. I think that is all, Mr. Chairman. I notice that Mr. Thom, in his statement, indicates that they have in mind a method that is much simpler than this, than the one outlined by Mr. Olney. I suppose it will be presented to the committee later on.

Mr. THOM. Yes, Mr. Doremus. I say now that the proposal that we have in mind does not deal at all with the Federal corporation taking over the stock of the State corporation but with the Federal corporation taking over the property and assets of the State corporation and also assuming all of their liabilities, leaving the stock in the hands where it is now; and that, as this power is a power exercised under the constitutional authority to regulate commerce, if it is a power to regulate commerce, then all those original stockholders took their stock subject to the subsequent exercise by Congress of this regulating power and can not be heard to object if Congress does do that, and as a proper method of regulating commerce requires Federal incorporation. I shall ask the committee for an opportunity of

presenting an argument on this legal question before we finally get through with the hearings.

The VICE CHAIRMAN. I wanted to supplement the answer to Mr. Doremus's question before turning the witness over to Mr. Sims, if Mr. Sims will permit.

Mr. SIMS. Certainly.

The VICE CHAIRMAN. Touching the vote and method of going into these Federal corporations, if it is a voluntary system of development, which you and I seem to favor—that is, if we have to have any I would rather agree with you than with the other people—then it would require just the same vote and procedure as it would to sell the property, would it not?

Mr. KNOWLTON. I think just the same.

The VICE CHAIRMAN. That is all.

Mr. SIMS. I do not think I want to ask the judge very many questions; but if I understand you, Judge, in your replies, you are not in favor of a general compulsory requirement upon all railroad companies to take out a Federal charter?

Mr. KNOWLTON. Well, yes. I do not say take out Federal charters, but I am in favor of a compulsory requirement that all interstate commerce shall be conducted over railroads acting under Federal charters; and that, of course, would virtually preclude the successful operation of State railroads and would compel the State railroads to avail themselves of such provision as is made for them, to save loss on their property.

Mr. SIMS. In other words, you would stop the wheels of interstate commerce?

Mr. KNOWLTON. No, sir. After due time, and when there is opportunity to accomplish the whole business, I should say that interstate commerce must be conducted over railroads chartered under Federal law, and that virtually, of course—as to all great railroads, certainly—would wind up the State railroads, compel them to dispose of their property or to avail themselves of the provision Congress makes for them.

The VICE CHAIRMAN. I want to withdraw my agreement to part of your views.

Mr. SIMS. But, Judge, is not the good that is to come from universal Federal incorporation to be mainly to concentrate regulation in one regulating authority and one regulating body?

Mr. KNOWLTON. I think that is a very important element in it.

Mr. SIMS. Is it not the chief object and aim and end of it?

Mr. KNOWLTON. I think there are numerous other advantages besides that. That may be the most important of them all. That is a very important one.

Mr. SIMS. In your judgment, you think that the States would over-regulate, or may if they continue; that the States would regulate to the extent of the powers that they have unless the Federal Government should go in and assume the regulating authority, which it has the right to do?

Mr. KNOWLTON. Different States regulate the same railroad in different ways, if it happens to be a railroad incorporated in these several States, and different public-service commissions act somewhat differently. Of course, there is harmony in many particulars, and I

assume that they are trying to approximate harmony; but the difficulties, I think, are great in that particular.

Mr. SIMS. One of the troubles, then, in your judgment, is that there is too much adverse and diverse and contradictory and unnecessary regulation on the part of the States?

Mr. KNOWLTON. Yes, sir; that is one.

Mr. SIMS. And you want to avoid that by having all the railroads incorporated under the Federal Government, so as to avoid this State regulation, so far as that will avoid it, and concentrate it in one regulating authority?

Mr. KNOWLTON. I think there should be a single system of regulation, and not several systems covering the same railroad.

Mr. SIMS. Would it not be necessary, then, to have a single regulating authority?

Mr. KNOWLTON. In a sense it would be; that is, the Interstate Commerce Commission, or something corresponding to it.

Mr. SIMS. The Interstate Commerce Commission is exercising only such authority as Congress confers upon it. It is Federal regulation—Government regulation.

Mr. KNOWLTON. Yes; the Federal Government does it. I want to ask the chairman—perhaps he was absent—if he noticed this in what I read: I said that the regulations or the provisions in reference to Federal incorporation might be more or less strict in various particulars, and much might be accomplished, probably, stopping short of what I said I should think would be the best thing; but my own view would be that as to interstate commerce the logical result would be to have it all done by railroads acting under Federal charters.

The VICE CHAIRMAN. Under that view of interstate-commerce railroads every old woman carrying a basket of eggs across a State line is acting in interstate commerce; and the birth of a man or the incorporation of a company has nothing on earth to do with the control of sovereignty over that man or that company.

Mr. KNOWLTON. What I said in this paper was that interstate commerce conducted over railroads should be under railroads having Federal charters. I agree that as to the woman who takes a basket of eggs across a State line, Congress would hardly make any statute.

The VICE CHAIRMAN. Suppose there was a different law in each State for the marketing of eggs: would you think that that ought to be under Federal incorporation?

Mr. KNOWLTON. I am inclined to think that that carries us further into details than I anticipated.

The VICE CHAIRMAN. You are dealing only with railroads, and you have not broadened out and looked at everything. Railroads are one feature.

Mr. KNOWLTON. Railroads are the feature with which we are dealing.

The VICE CHAIRMAN. Take mortgages in different States; are you going to require that Congress shall regulate all those mortgages?

Mr. KNOWLTON. What I have been considering is interstate commerce conducted over railroads.

The VICE CHAIRMAN. You can get yourself lost in theorizing on uniformity and run right counter to God and nature and the Supreme

Court of the United States, which has formally declared that there is no such thing as uniformity in the United States.

Mr. SIMS. In concentrating the power of regulation or control in the Federal Government, do you not think it wise that the National Government should exercise all the control over these railroads doing an interstate business, which it has the power to provide and exercise every element and every detail of it?

Mr. KNOWLTON. I do not quite think that, Judge Sims. I think that there are local matters about which Congress might legislate, and which it might subject to national regulation, which it might be better, because of the narrow local quality of them, to leave to local tribunals. But as to those things which affect the great general business of commerce, I think there should be a single source of regulation.

Mr. SIMS. Then, anything that a State or county or city might do that would substantially interfere with the ability of the railroad to perform the functions of interstate commerce equally and impartially and fairly, in all its relations with all the different States through which it runs, and with all the services that it may be called on to perform—in other words, uniform service?

Mr. KNOWLTON. I think that Congress in providing for the regulation of interstate commerce should go as far as it is reasonably necessary to achieve the best results, to make effectual the regulation; but I think it might stop short without interfering with general results; it might stop short of some specific local matters.

Mr. SIMS. If you do not cover the whole field, then may not the States occupy the uncovered field, and to that extent be an annoyance and a vexation and a detriment to the economic operation of the railroad company?

Mr. KNOWLTON. Yes, sir; but if the uncovered field is large enough and of such a kind as to be a serious detriment to interstate commerce, then Congress ought to go a little further and take care of it. I would not leave a field of that kind.

Mr. SIMS. Would you leave taxation to the State, as it is now?

Mr. KNOWLTON. I do not know whether I would say as it is now.

Mr. SIMS. Well, would you leave taxation to the States, unaffected and unregulated or uncontrolled by the National Government through its instrumentalities?

Mr. KNOWLTON. My impression is that I should leave taxation to a certain extent and in certain fields to the States, and perhaps not others.

Mr. SIMS. You would split it up, then?

Mr. KNOWLTON. Well, taxation is split up into a good many fragments nowadays.

Mr. SIMS. I know; but you are going to let the States retain part of the taxation which the Federal Government may have the power to prevent or to exercise itself?

Mr. KNOWLTON. Of course, it is possible to do those things one way or another. Which would be the wiser way in such a detail as that I am not prepared at this moment to answer to my own satisfaction.

Mr. SIMS. Suppose the different States levy taxation which is so unequal as between each other, in miles of road or value of property.

-or income, net or gross, as to make it a substantial discrimination in favor of or against a particular State; I mean the people of some particular State served by the line; would you then think that the National Government should exercise its authority to prevent the States from taxing at all this nationally incorporated railroad?

Mr. KNOWLTON. I think the National Government should prevent taxation to that extent and with that result. I do not know that it necessarily follows that it should prevent taxation at all.

Mr. SIMS. I mean regulate taxation; I do not mean prevent it, but regulate or fix or determine what tax shall be levied and collected, and should be uniform in the different States served by the corporation.

Mr. KNOWLTON. If you are not going to put all your taxation into the General Government or State governments, just where you would draw the line may be a matter of difficulty calling for nice and careful consideration. My impression now is that I should draw the line, leaving certain qualities of taxation to the State; but perhaps that would not be the wisest way.

Mr. SIMS. In taxation, as a general principle, would you tax railroads upon their physical, tangible properties located within the States, or would you tax them upon the amount of outstanding capital, stocks, and bonds, or would you tax them according to net or gross earnings?

Mr. KNOWLTON. Those are details which I have not considered in particular, and I could not give you an opinion which I should feel was certainly my final opinion upon such questions as that. I think they are details that we need not undertake to work out at this moment.

Mr. SIMS. It seems to me that if you are going to deprive the States of the authority to do anything that they now do, we should know why; and then if the National Government, under national charter, is going to exercise any authority that it does not now exercise, it should exercise this authority where the States are not now uniformly exercising the same authority, with its effect on the ability of the corporation to perform its services.

Mr. KNOWLTON. In Massachusetts, as to taxation of railroads, we tax them just as we tax any other property, any real estate owned by the railroad company outside of its regular right of way. We tax that. We do not tax its property within the right of way which is devoted strictly and narrowly to a public use, but we impose a franchise tax upon the railroad, upon all its property; so that there are two kinds of tax. The franchise tax is a general tax which depends upon the value of the capital and the value of the property as a whole; and then taxation of property which it happens to own outside of the strictly and narrowly public use of a right of way. There are various ways of working out taxation.

Mr. SIMS. I am not asking you for the details of the Massachusetts taxation; I am only thinking whether the Government should have the taxation or the State of Massachusetts.

Mr. KNOWLTON. I mentioned that rather by way of illustration of the different ways in which you can deal with such questions.

Mr. SIMS. Here is a table of State railroad taxes for the year 1914 which has just been published in a book which was loaned me. The book is entitled "Government Partnership in Railroads." Mr. Mark Wymone is the author of it, but I suppose he took his figures from official sources. New Jersey collected in that year \$6,604,781 in taxes, which equaled \$3,068 per mile of line. New Jersey has 2,152 miles, or about that. She collected on that 2,152 miles \$6,604,781. I do not know the system by which New Jersey collects its railroad tax, but I know that \$3,068 per mile of line, if it is applied to all of the railroad mileage in the United States upon a mileage basis, that a good many of them are going into receivers' hands to stay.

Mr. ESCH. That does not show whether it is single or double track. Judge.

Mr. SIMS. I am supposing that the "per mile of line" all mean the same thing.

Mr. ESCH. But they may be double track.

Mr. SIMS. But I am supposing that in every State here the "mile of line" means the same thing in this table. Now, New Jersey got \$3,068 per mile of line in 1914, and South Dakota got \$255 per mile of line. The average for all the railroads of the United States during that year was \$579 per mile of line. The amount collected was \$136,263,054. But if every State in the United States collected per mile of line the same amount in taxes as did New Jersey for that year the taxes would have amounted to \$681,315,270. Now, do you not think such a power of taxation exercised by a State might hamper a railroad running through that State into another State whose tax is but \$255 a mile in rendering such service and charging such rates and making such improvements throughout its entire mileage as it could if no such tax was collected?

Mr. KNOWLTON. There would have to be some method adopted of working out what seemed to be the best approximation to justice. I think, taking all the railroads in the United States together, that taxation by mile of line would be a very inequitable manner of taxation when you take South Dakota and compare it with Connecticut.

Mr. SIMS. There is no doubt about that. Now, in your State, Massachusetts, in that year you collected \$3,232,883, or \$1,550 a mile. You collected a little less than half what New Jersey did per mile of line. The State of New York for that year collected \$10,709,702, or \$1,311 per mile of line. The State of Texas, having 14,658 miles of line, collected for the same year \$4,382,808, or \$299 per mile. If the State of Texas had collected the same tax per mile of line that New Jersey did, for that State alone it would have amounted to \$44,970,744 for that year. And the State of Illinois, having 12,000 miles of line, instead of collecting what it did collect, \$8,097,545, or \$675 a mile, would have collected \$36,816,000 a mile.

I will ask to have the complete table inserted in the record at this point.

(The table referred to is here printed in full, as follows:)

*State railroad taxes, year 1914.*

State.	Amount.	Per mile of line.	State.	Amount.	Per mile of line.
New Jersey.....	\$6,604,781	\$3,068	Maine.....	\$1,060,336	\$496
Rhode Island.....	265,952	1,845	Nevada.....	983,927	472
District of Columbia.....	57,394	1,678	Arkansas.....	2,018,598	466
Massachusetts.....	3,232,883	1,550	Tennessee.....	1,644,120	448
New York.....	10,709,722	1,311	Wyoming.....	789,340	443
Ohio.....	9,235,378	1,032	Delaware.....	149,402	446
Connecticut.....	1,013,836	1,017	Montana.....	2,119,912	445
Washington.....	4,860,509	995	New Mexico.....	1,276,641	413
Pennsylvania.....	8,824,383	831	Mississippi.....	1,702,928	442
Maryland.....	983,434	732	Nebraska.....	2,594,851	420
Oregon.....	1,730,265	683	Kansas.....	3,593,097	396
Illinois.....	8,097,545	675	Louisiana.....	1,778,823	381
Indiana.....	4,880,652	670	Colorado.....	2,026,619	372
California.....	4,925,589	665	Alabama.....	1,755,382	357
Idaho.....	1,738,925	662	North Dakota.....	1,782,144	334
New Hampshire.....	809,313	649	Iowa.....	3,285,344	337
Wisconsin.....	4,387,545	619	North Carolina.....	1,440,443	336
Kentucky.....	2,188,544	619	Texas.....	4,382,808	299
Minnesota.....	5,396,777	605	South Carolina.....	938,900	288
Virginia.....	2,428,900	579	Florida.....	1,207,574	281
West Virginia.....	1,760,479	557	Missouri.....	2,173,382	279
Oklahoma.....	3,391,688	545	Georgia.....	1,820,601	277
Utah.....	1,096,726	541	South Dakota.....	1,061,203	235
Arizona.....	1,133,451	525			
Michigan.....	4,316,394	519	Total, United States:	136,263,054	579
Vermont.....	499,224	509			

<sup>1</sup> Excludes \$4,769,512 assessed by the United States Government and other smaller items on Canadian mileage.

Mr. SIMS. Now, are not these enormous differences in the amount of taxes collected per mile of line in the different States of the Union sufficient of themselves to show that if it is necessary for the Federal authorities to take exclusive control of any burden of the railroads that they now have to bear it certainly ought to take charge of the amount of taxes that might be collected from the same railroad company operating in different States; and why should taxation be left out and excepted from the provisions of a national charter?

Mr. KNOWLTON. I have no doubt that Congress should make some provisions in reference to taxation of Federal corporations.

Mr. SIMS. That, then, should be uniform?

Mr. KNOWLTON. Well, I would not say that it should be the same rate per mile in Dakota that it is in New Jersey.

Mr. SIMS. No; uniform taxation does not mean that. This is done in this way by mile of line. Now, it seems to me the suggestion of taxation on gross earnings of a railroad is the best and most uniform system that can be adopted; but, whatever the tax is on a railroad doing an interstate business, it should be uniform. Therefore I can not understand why a gentleman coming before this committee advocates leaving the taxing power, which is the power to destroy, unhampered, uncontrolled, and unregulated, in the hands of the States but wants to take away from it the other powers that the States can exercise.

Mr. KNOWLTON. I would not leave it unhampered, uncontrolled, and unregulated in the States.

Mr. SIMS. Now, then, in granting a national charter, would not Congress have a right to place any condition in the charter that it saw proper?

Mr. KNOWLTON. I think so.

Mr. SIMS. With reference to everything pertaining to the functions to be performed by the charter?

Mr. KNOWLTON. I think so.

Mr. SIMS. I agree with you. I think so, too; but I am asking you for your opinion and judgment on it. And if overregulation is affecting the railroads economically—and I think it is; I do not think anybody can question that, that some regulation is, by the States and multiplicity of regulatory bodies—can we tell to what extent it is going to go if it goes to its limit in all of the States of the Union?

Mr. KNOWLTON. I have assumed that these Federal corporations will be corporations covering a certain system, a certain part of the country; that it would not be one great corporation for the whole country, and, on the other hand, it would not be a corporation limited by State lines, and that there would be some tribunal created that would deal with the matter of incorporation, with various powers, and that there will be some provision with regard to taxation as to these corporations in different parts of the country, some system adopted. I have not attempted to work out what will be a good system of taxation.

Mr. SIMS. Now, I will ask you a practical question. It is often, perhaps, better to do something that we are not doing, or refrain from doing something that we are doing; but when it has to be done by law, and the law has to be made by a legislative body, and the members of that body have to be elected by the people, it makes it practically very difficult to carry out the theoretically best plan. Now, do you think it is reasonable to suppose for a moment that the State of New Jersey and these States, like your own, where you get \$1,150 per mile, and New York \$1,311 per mile, that they will readily consent to give up this power to tax the tangible property through their States to the United States Government?

Mr. KNOWLTON. I should hope that the people of the different States—the people of the State where I live—would want to do, and would consent to do, that which was for the public interest if they are convinced it is for the public interest.

The VICE CHAIRMAN. The time for adjournment has arrived; and without objection by the committee, it will be ordered that the committee shall stand adjourned, subject to the call of the chairman, or the acting chairman in the absence of the chairman, at any time after two weeks from to-day.

Gentlemen, the hearings that have been printed have been exhausted, and repeated references have been made by Judge Lovett and Mr. Kruttschnitt to the testimony of Mr. Thelen, and I shall take the liberty to print either the statement that Mr. Sims read from the newspapers from Mr. Thelen or to reprint his testimony; also a speech which was printed in Mr. Thelen's testimony by a gentleman from Virginia, whose name I have forgotten. I will also print in the hearings, touching the car service that Mr. Esch examined Mr. Kruttschnitt about, the paper from Mr. Prince, who has a plan with reference to car shortage.

That being understood, the committee will stand adjourned.

(Thereupon, at 1.30 o'clock p. m. the joint committee adjourned, subject to the call of the chairman.)

[Utilities Magazine, January, 1917.]

## THE NEWLANDS RAILROAD INVESTIGATION.

By MAX THELEN, *President National Association of Railway Commissioners.*

The Federal Government is now engaged in two public-utility investigations of momentous importance.

The first investigation, in order of time, is the valuation of all the interstate railroads and telephone and telegraph companies, now being conducted by the Interstate Commerce Commission, by its Division of Valuation. This proceeding is the most gigantic public-utility valuation ever undertaken.

The second investigation is far broader than the first in its scope, and may result in an entirely changed relationship between Government, State and Federal, and all public utilities engaged in commerce among the States or with foreign nations. The Newlands railroad investigation, so-called, is not confined to railroads. It includes all public utilities engaged in commerce among the States and with foreign nations—railroad, telegraph, telephone, wireless, cable, water carrier, and express companies. It covers not merely the public regulation of these various classes of utilities but also the entire subject of Government ownership of these utilities and the relative merits of Government ownership as compared with Government regulation of all these utilities. Never before has the Federal Government undertaken an inquiry so colossal, so fraught with momentous potentialities, economic, financial, and governmental.

## PRESIDENT'S MESSAGE.

The Newlands railroad investigation was initiated in response to the President's message to Congress, presented on December 7, 1915. The relevant portions of the message read as follows:

"In the meantime may I make this suggestion? The transportation problem is an exceedingly serious and pressing one in this country. There has from time to time of late been reason to fear that our railroads would not much longer be able to cope with it successfully as at present equipped and coordinated. I suggest that it would be wise to provide for a commission of inquiry to ascertain by a thorough canvass of the whole question whether our laws, as at present framed and administered, are as serviceable as they might be in the solution of the problem. It is obviously a problem that lies at the very foundation of our efficiency as a people. Such an inquiry ought to draw out every circumstance and opinion worth considering, and we need to know all sides of the matter if we mean to do anything in the field of Federal legislation.

"No one, I am sure, would wish to take any backward step. The regulation of the railways of the country by Federal commission has had admirable results and has fully justified the hopes and expectations of those by whom the policy of regulation was originally proposed. The question is not what should we undo. It is whether there is anything else we can do that would supply us with effective means, in the very process of regulation, for bettering the conditions under which the railroads are operated, and for making them more useful servants of the country as a whole. It seems to me that if it might be the part of wisdom, therefore, before further legislation in this field is attempted, to look at the whole problem of coordination and efficiency in the full light of a fresh assessment of circumstances and opinion as a guide to dealing with the several parts of it."

## THE JOINT RESOLUTION.

In response to the President's suggestion, Senate joint resolution No. 60 was introduced in the Senate. After amendment on the floor of the Senate so as to include the question of Government ownership, the resolution was adopted by both Houses of Congress and approved by the President on July 20, 1916. The resolution reads as follows:

*"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Committee of the Senate and the committee of the House of Representatives on Interstate and Foreign Commerce, through a joint subcommittee to consist of five Senators and five Representatives, who shall be selected by said committees, respectively, be, and they hereby are, appointed to investigate the subject*

of the Government control and regulation of interstate and foreign transportation, the efficiency of the existing system in protecting the rights of shippers and carriers and in promoting the public interest, the incorporation or control of the incorporation of carriers, and all proposed changes in the organization of the Interstate Commerce Commission and the act to regulate commerce, also the subject of Government ownership of all public utilities, such as telegraph, wireless, cable, telephone, express companies, and railroads engaged in interstate and foreign commerce and report as to the wisdom or feasibility of Government ownership of such utilities and as to the comparative worth and efficiency of Government regulation and control as compared with Government ownership and operation, with authority to sit during the recess of Congress and with power to summon witnesses, to administer oaths, and to require the various departments, commissions, and other Government agencies of the United States to furnish such information and render such assistance as may, in the judgment of the joint subcommittee, be deemed desirable, to appoint necessary experts, clerks, and stenographers, and to do whatever is necessary for a full and comprehensive examination and study of the subject and report to Congress on or before the second Monday in January, 1917; that the sum of \$24,000, or so much thereof as is necessary to carry out the purposes of this resolution and to pay the necessary expenses of the subcommittee and its members, is hereby appropriated out of any money in the Treasury not otherwise appropriated. Said appropriation shall be immediately available and shall be paid out on the audit and order of the chairman or acting chairman of said subcommittee, which audit and order shall be conclusive and binding upon all departments as to the correctness of the accounts of such subcommittee."

As will be observed, the joint resolution provides for investigation of the following subjects:

1. Government control and regulation of interstate and foreign transportation.
2. The efficiency of the existing system in protecting the rights of shippers and carriers and in promoting the public interest.
3. The incorporation or control of the incorporation of carriers.
4. All proposed changes in the organization of the Interstate Commerce Commission and the act to regulate commerce.
5. Government ownership of all public utilities, such as telegraph, wireless, cable, telephone, express companies, and railroads engaged in interstate or foreign commerce; the wisdom or feasibility of Government ownership of such utilities; and the comparative worth and efficiency of Government regulation and control as compared with Government ownership and operation.

#### THE JOINT COMMITTEE.

The following members of the Senate and House were appointed members of the joint committee:

Senate: Francis G. Newlands, Nevada; Joseph T. Robinson, Arkansas; Oscar W. Underwood, Alabama; Albert B. Cummins, Iowa; Frank B. Brandegee, Connecticut.

House of Representatives: William C. Adamson, Georgia; Thetus W. Sims, Tennessee; William A. Cullop, Indiana; John J. Esch, Wisconsin; Edward L. Hamilton, Michigan.

The members of the joint committee organized by selecting as chairman Francis G. Newlands and as vice chairman William C. Adamson.

#### THE HEARINGS.

The first hearing was held in Washington on November 20, 1916. Subsequent hearings were held on November 23, 24, 25, 27, 28, and 29 and December 1, 2, 6, 7, and 9. On the last day the joint committee adjourned until the further call of the chairman. It is supposed that Congress will continue the joint committee and will extend its time to report, and that sessions may be resumed after March 4, 1917, if not earlier.

More than nine months ago the railroads publicly announced that they had a plan or program of remedial legislation which they desired to present to Congress. In fact, it is generally understood that the hereinbefore-quoted paragraphs from the President's message of December 7, 1915, were inserted because of the representations of the railroad executives to the President that

the railroads were suffering and that they had a program of remedies which they desired to present to Congress.

Nevertheless, at the first hearing of the joint committee the railroads took the position that they were not ready, that their minds were in a formative stage, and that they wished thereafter to formulate suggestions in the light of such testimony as might first be presented by the "representatives of the public," meaning thereby various chambers of commerce, boards of trade and bourses, economists, publicists, bankers, and financiers. It may be pertinent in this connection to observe that most of the various chambers of commerce, boards of trade, and bourses which have entered their appearance before the joint committee intend to present the railroad program, or parts thereof, and that most of the economists and publicists, bankers, and financiers who are to appear were suggested by the carriers, who had been in communication with them with reference to the evidence which they are to present to the joint committee. The representatives of the "public" have, of course, seen none of these witnesses, nor have they vied with the railroads in the tremendous publicity campaign which the railroads have been waging for almost a year preparatory for these hearings.

The railroad plan before the joint committee very obviously was to have their program presented not by themselves but by the supposed "representatives of the public." We may assume that after their plan had been thus presented the railroads would have graciously assented to it, thus producing perfect harmony and accord.

Even at this late date some railroad executives and their advisors still seem to think that the way to play the game with the public is to play one card on the table and keep three under the table. Some friend should tell them that that way of playing the game will no longer win in this country. The maneuvers of the railroads at the opening of the Newlands investigation reminded me of a great ostrich looming in the foreground, clearly seen by every observer, yet with its head in the sand, imagining that no one saw it.

The joint committee at once saw the situation. The committee very properly directed the railroads, who, as everyone knew, were there to propose changes in the existing order of things, to stop their maneuvering and to present their program.

The following witnesses have appeared, in order, before the joint committee: Alfred P. Thom, William J. Bryan, Max Thelen, and Smith Brookhart.

Mr. Thom is general counsel for the Southern Railway Co. and counsel for the advisory committee of railway executives. He presented the railroad program. He testified on November 23, 24, and 25 and was cross-examined by the members of the joint committee on November 27, 28, and 29, and December 1 and 2.

Mr. Bryan opposed the taking of power over railroads from the States and the centralization thereof in the Federal Government, as urged by the railroads. He testified on December 7.

Mr. Thelen presented the opening statement on behalf of the National Association of Railway Commissioners and the various State railroad and public-service commissions. He opposed those portions of the railroad program which contemplate taking from the people of the States all important powers over railroads and which urge the Federal incorporation of all the railroads as the means to accomplish this purpose. He testified on December 6 and 9. He stated that later during the hearings the National Association of Railway Commissioners will give consideration to each change suggested by the railroads and will probably present their own constructive suggestions.

Mr. Brookhart represented the Board of Railway Commissioners of Iowa. He advocated Government ownership and operation of the railroads. He testified on December 9.

The completion of the cross-examination of Mr. Thom and the cross-examination of Mr. Bryan, Mr. Thelen, and Mr. Brookhart were deferred until a later date.

#### CONTENTIONS OF RAILROADS.

The contentions of the railroads were ably and eloquently presented to the joint committee by Mr. Alfred P. Thom.

Mr. Thom first drew attention to the financial needs of the railroads, present and prospective. He admitted that the railroads have failed to supply the necessary cars, equipment, and terminal facilities, and that the railroads require and will require large amounts of additional capital for additions, bet-

terments, and extensions. He referred to the necessity of large expenditures to make the railroads more effective instrumentalities of national defense. He testified that during the next 10 years the railroads will be compelled to expend \$1,250,000,000 annually for additions to capital account and \$250,000,000 annually for refunding maturing indebtedness.

Mr. Thom urged that railroad credit has been seriously impaired, and that unless the legislation now proposed and hereafter to be proposed by the railroads is enacted they will find great difficulty in securing the necessary additional funds. He testified that in 1915 less than 1,000 miles of new railroads were constructed in the United States, and that this is the least additional mileage of railroads constructed in this country in any year since 1848.

Referring further to railroad finances, Mr. Thom testified that the percentage of the bonded indebtedness of the railroads to the total face value of all their securities, including both stock and bonds, had increased from 49.78 per cent in 1900 to 61.8 per cent in 1914 and 65 per cent in 1916. The result of financing railroads almost entirely from other people's money through the sale of bonds appears all the more serious when attention is drawn to the fact that the 100 per cent face value of securities referred to by Mr. Thom includes the full par value of all outstanding capital stock, including all the water therein.

Addressing himself then to the cause of impaired railroad credit, Mr. Thom urged that the cause is public regulation of the railroads, both Federal and State, but principally State. He urged that from the point of view of the railroad financier there are two great objections to public regulation, first, that the regulating authority can affect the railroad's gross revenues, and, second, that it can affect the railroad's gross operating expenses, including taxes. These two conditions are, of course, inherent in public regulation of the railroads, and would exist as well under exclusive control by the Federal Government. Mr. Thom conceded that public regulation must continue, but argued that regulation has been undertaken and is being carried forward in a spirit of vindictiveness. He urged that there be now a change in what he alleged to be the public attitude toward the railroads.

#### REMEDIES PROPOSED BY RAILROADS.

To alleviate the alleged existing conditions the railroads proposed to the joint committee the following nine specific remedies as the first installment of their program:

1. The taking away from the States and the vesting in the Federal Government of all power over railroads, as to matters both State and interstate, except only the power of the States over taxation and police powers which are not "vital," which two powers are to be left to the States "for the present" as a matter of policy.

2. The compulsory incorporation under charter from the Federal Government of all railroads to any extent engaged in interstate commerce and the removal of all such corporations from control by the States under their existing State charters, this being the instrumentality suggested by the railroads to enable them to accomplish their purpose to take away the powers of the States.

3. The taking away from the Interstate Commerce Commission of all powers except those which are judicial; the vesting of all powers of supervision, detention, prosecution, and correction over railroads in a new Federal commission to be known as the Federal railroad commission, with a right of review of its orders to be exercised by the Interstate Commerce Commission; increases in the salaries and tenure of office of the members of the Interstate Commerce Commission; and the creation of an indefinite number of "regional commissions," 15 or more, subordinate to the Interstate Commerce Commission, to sit in various sections of the country and to assist the Interstate Commerce Commission, not merely to exercise its present functions but also to perform the tremendous mass of local and detailed work in the regulation and supervision of railroad, telephone, and telegraph companies, which is now being done, promptly and generally wisely and efficiently, by the railroad and public service commissions of the various States of the Union.

4. The establishment of minimum rates, in addition to maximum rates, as at present, by the Interstate Commerce Commission, with power to determine the relationship between rates and differentials.

5. (a) The amendment of the interstate-commerce act, so as to provide that in passing on the reasonableness of railroad rates it shall be the duty of the

Interstate Commerce Commission to give consideration to certain specified factors, namely, the value of the service (our old friend—"all the traffic will bear"), the rights of the passengers, shippers, and owners of the property transported, the expenses incident to the maintenance and operation of the carrier's property, the rights and interests of the stockholders and creditors of the corporation, the necessity for the maintenance in the public service of efficient means of transportation, and for the establishment from time to time of additional facilities and increased service, and any other pertinent elements.

(b) The amendment of the interstate-commerce act so as to limit the power of the Interstate Commerce Commission to suspend rates from 10 months to 60 days, with provision for refunds if the increased rates should not have been allowed to become effective.

6. The grant to the Interstate Commerce Commission of the power to establish railway mail pay. (This has already been done.)

7. The grant to the Federal Government of the exclusive power "to supervise the issue of stocks and bonds by railroad carriers engaged in interstate and foreign commerce."

8. The grant to the railroads of the right to merge and consolidate, under authority of the Interstate Commerce Commission.

9. The grant to railroad traffic and other officials of the right to meet and agree with respect to rate practices, subject to disapproval of such agreements by the Interstate Commerce Commission.

Mr. Thom states that, at least for the present, the railroads would not go into the question of wages before the joint committee.

#### RAILROAD DRIVE AT STATES.

While each plant in the railroad program deserves, and will no doubt receive, careful consideration, the main effort of the railroads and their allies is being centered on the drive against the States. It is proposed to take from the States not merely all the powers which they are now exercising over interstate commerce (by reason of the failure of the Federal Government heretofore to enter certain field of activity in the regulation of interstate commerce), but also to deprive the people of the States of the right to regulate and supervise the purely State rates, service, facilities, equipment, and safety of operation of practically every railroad in the United States. The only powers over railroads to be left to the States are to be the taxing power and the power over police regulations, which are not "vital." These powers are to be left "for the present" only, as a matter of policy.

Up to the present time, the charges of the railroads against the States rest almost entirely in mere generalities.

The railroads allege that their financial difficulties have been caused largely by the action of States in reducing their rates to "just above the point of confiscation." When we remember that, on the showing made by the railroads themselves, only 15 per cent of their entire business is State business it is difficult to understand how the difference between reasonable State rates and rates "just above the point of confiscation" could have placed the railroads in their present financial condition, even if all the States had systematically entered upon a campaign to do the things with which the railroads charge them, which the States, of course, have not done. It is more difficult to disprove than to make mere general charges. The representatives of the States before the joint committee have called upon the railroads to point out, by page and volume of the record, the instances in which they claim that railroad rates have been cut to the point of confiscation. When these cases are specified the States will be prepared to present further testimony with reference to them.

The railroads further urge that some States have reduced railroad rates unduly for the purpose of discriminating against the business of sister States or against interstate commerce. If such instances have existed, they are now all taken care of by the decision of the Supreme Court of the United States in the last Shreveport case, *Houston, East & West Texas Ry. Co. and Houston & Shreveport R. R. Co. et al. v United States*, the Interstate Commerce Commission, et al. (234 U. S., 342). Whatever the representatives of the States may hereafter present concerning this decision, the point urged by the railroads has been fully met by the Supreme Court.

It is further contended that in three instances the power of the States over the security issues of railroads has been used unwisely or improperly. The representatives of the States have consistently urged that the Federal Government

should perform what we believe to be its clear duty in providing for effective control of the issue of securities and kindred matters of all railroads engaged in interstate commerce. Such control might be either concurrent with the States affected or exclusive. In either event, any existing difficulties could easily be adjusted. Action in this field of regulation can readily be taken without interference in any other field of railroad regulation.

If the railroads should be successful in their drive against the States, the inevitable result would be either the breakdown of all public regulation of the railroads or the establishment of an enormous Federal bureaucracy, not familiar with local conditions and removed from access by the local citizen who now finds adequate and speedy relief at the hands of his State commission.

In advocating the taking from the people of the States of practically all power over railroads, even in purely State and local matters, the railroads have taken on themselves a burden of proof which, in my judgment, they never can sustain.

#### RAILROADS PROSPEROUS.

The railroads have chosen a particularly inappropriate time to raise the cry that public regulation has driven them to the wall financially.

Every person familiar with financial conditions knows that the fiscal year 1915 was a good year for the railroads; that the fiscal year 1916 was the most prosperous year in their history; and the fiscal year 1917 has been at least as good for the railroads as the corresponding period in 1916.

The following table, taken from the financial columns of the *Financial Age* of October 21, 1916, contains a comparison of income available for dividends on the common stock of the railroads named in the fiscal years 1915 and 1916:

*Comparison of income available for dividends earned by the railroads named in the fiscal years of 1915 and 1916.*

	1915	1916
	<i>Per cent.</i>	<i>Per cent.</i>
Union Pacific.....	11	15.65
Southern Pacific.....	7.2	11
Atchafalpa.....	9.2	12.3
St. Paul.....	3.28	17.33
Northern Pacific.....	7.58	10.47
Chicago, St. Paul, Minneapolis & Omaha.....	7.71	11.97
Northwestern.....	7.50	11.4
"Soo Line".....	7.87	16.3
Wisconsin Central.....	(1)	9.18
Alabama Great Southern.....	3.4	12.6
Illinois Central.....	6.27	10.6
Louisville & Nashville.....	6.8	19.4
Southern.....	.03	15.3
Lehigh Valley.....	10.4	12.63
Jersey Central.....	19.36	21.8
Pennsylvania.....	8.5	11
Baltimore & Ohio.....	5.5	7.3
Reading.....	10.6	11.5
Chesapeake & Ohio.....	4.25	11
Norfolk & Western.....	8.8	16.7
New York Central (fiscal year ending Dec. 31).....	8	18

1 Common. 2 Deficit. 3 Preferred. 4 About. 5 Nearly. (10.96.) 6 Probably.

Referring to the great prosperity of the railroads the *Financial Age*, in its issue of October 7, 1916, said:

"That the railroad list should have occupied so much of Wall Street's attention during the past week is not surprising in view of the remarkable statements of railroad earnings that are daily coming to hand. Recently published returns of several of the companies' largest systems are not only impressive in their aggregate but all the more so on account of the substantial increases over corresponding periods of last year, when traffic on all the leading systems was beginning to show material improvement over previous years. A notable instance of this was furnished by the publication during the week of the Union Pacific's report for the fiscal year ending June 30, which shows the largest gross earnings in the company's history, with surplus income after deducting all charges, including the preferred stock dividend, equivalent to 15.65 per cent on the common stock, which compares with slightly less than

11 per cent in the preceding year. Another remarkable showing was that of the Louisville & Nashville, whose income balance for the last fiscal year was equivalent to about 19.4 per cent of the company's capital stock, as against 6.75 per cent in 1915. Such instances might be multiplied indefinitely, but all of them are eloquent of the fact that the wonderful activity and prosperity in mercantile and industrial lines that have developed since war began have spread freely to the railroad world."

The railroads are in a hysteria of pessimism. With earnings beyond all previous records and constantly growing larger, the railroads seem to be engaged in the absurd task of trying to ruin their own credit. Is it not time for the railroads to get off the mourners' bench, to come out into the sunshine of their prosperity, and to devote themselves to the business of running their railroads and of supplying cars, equipment, terminal facilities, and extensions which the public urgently requires?

That is what the railroads of California are doing. Why should not other railroads pursue the same sensible course?

#### "THE FORTY-NINE MASTERS."

The first reference which our railroad friends and the various chambers of commerce, boards of trade, bourses, and others who are associated with them in their campaign make through their very active publicity bureau, in their newspapers and magazine articles, their speeches, lectures, and addresses on this general subject, is, with every recurring unanimity, to the "49 masters." When I first heard this phrase I took it seriously. I immediately looked into the railroads of my own State—California—but found that out of 61 operating steam railroads, 56 are located entirely within the State, and hence are subject to only two masters—the State of California and the Federal Government—instead of 49 masters. Of the other five railroads, 3 run through 3 States each and 2 run through 10 or 12 States each. Investigating further, I found that the two railroads which operate in the most States, and hence are subject to the most masters—the Southern Pacific and the Santa Fe—are the most prosperous of all.

I went further. I examined assiduously all the railroad maps I could secure, trying to find the railroad which runs through 48 States. Notwithstanding the most persevering efforts I have been unable to find any railroad which runs through more than one-third that many States.

About that time some kind friend told me not to take the matter too seriously, that these words were merely language to tickle people's ears—and that they were so understood by all who use them.

#### REVERSAL OF GOVERNMENTAL PRINCIPLES.

The proposals of the railroads to take from the people of the States practically all their power over local railroad matters constitutes a complete reversal of governmental principles which were established at the beginning of our constitutional history and have been recognized and in effect ever since.

Those powers which affect the Nation as a whole and which can best be exercised by the central government were delegated by the Constitution to the Federal Government. The remaining powers, which it was assumed could best be exercised by the local authorities, were left to the States and to the people.

It is proposed now by the railroads to reverse this policy by taking from the people of the States their local powers over railroads and to throw these powers in their tremendous aggregate, into the lap of the Federal Government. It is proposed to tear up by the roots the State commissions which have grown up out of the life, the needs, and the aspirations of the people of the States and to substitute in lieu thereof an enormous Federal bureaucracy superimposed upon the people of the States by the central government at Washington.

The States are handling promptly and generally fairly and effectively a multitude of local matters affecting the railroads. During the year ending June 30, 1916, the railroad commission of California disposed of 3,212 informal complaints, of which 767 affected railroads, and of over 900 formal complaints and applications, of which over 350 affected railroads. The railroad proceedings disposed of by the California commission during this period included questions of rates, refunds, service, extensions, grade crossings, separation of grades, issue of securities, transfers, incumbrances and lease of property, rules and

regulations, safety of construction and operation, discontinuance of operation, trackage agreements, and many other matters. These proceedings are generally heard or investigated in the locality affected by men familiar with local conditions and are promptly disposed of. The work of this one State commission is indicative of what is being done by the other 45 State commissions.

To persons intimately acquainted with the work now being done by the various States in regulating railroads in State matters it seems impossible that this work could be done as well and as effectively by an immense centralized bureaucracy with headquarters at Washington as it can be done by the States themselves.

I have always been of the opinion that the Federal Government should do whatever the Federal Government can best do for our people, and that the State governments should do whatever they can best do. In my opinion, this is the best practical test of where the line of division between the powers of the Federal Government and the powers of the State governments ought to run. Judged by this test, it would seem that, with the exception, probably, of the control over the issue of railroad securities and of railroad mergers, consolidations, and similar matters, the States should retain the powers which they now have over local railroad matters as long as the railroads remain in private ownership.

#### RAILROAD DIAGNOSIS INCORRECT.

The railroads have made an entirely incorrect diagnosis of their financial ills.

The cause of impaired railroad credit is not public regulations, either State or Federal.

Railroads went into receiverships before the days of public regulation, and they will continue to go into receiverships under regulation unless regulation strikes at the root of railroad financial ills and is made thoroughly effective.

California disproves the claim that public regulation injures the railroads and other public utilities. During three years of regulation by the State railroad commission more than \$200,000,000 of new money has been invested in California public utilities. The steam railroads alone have added \$55,000,000 to their investments. During the last five years over 1,200 miles of new railroads have been constructed in California. At present, under State regulation, nine railroads, with a total mileage of 221 miles, are under construction or extension in California. The prosperity of California railroads and other public utilities under efficient regulation by the State railroad commission proves conclusively that the cause of impaired railroad credit is not to be found in public regulation.

The real causes of impaired railroad credit, to the extent to which such impairment exists, are not to be found in public regulation but in unsound financial structures, unwise railroad construction, and at times criminal mismanagement of railroad finances. The claim of the railroads that their impaired credit has been caused by public regulation seems to be merely a blind to divert attention from the real causes. It is significant that in their presentation before the Newlands committee the railroads not once referred to the acts of their financiers and executives, which have been the cause of most of their troubles, but dwelt solely on public regulation.

To cut off the powers of the States over railroads, on the pretext that the States have caused the financial difficulties in which some of the railroads find themselves, would be just as absurd as to cut off a patient's good right arm when the real cause of his trouble is a diseased liver or appendix.

The railroads are not suffering from the good right arm of public regulation, but from a case of acute gastritis, caused by an overdose of undigested securities.

#### REAL CAUSES OF IMPAIRED RAILROAD CREDIT.

As already indicated, the real causes of impaired railroad credit, to the extent to which such impairment exists, are to be found principally in the acts of railroad financiers and executives in building unsound financial structures, in constructing railroads where not needed, and in mismanaging the finances of the railroads whose trustees they were. As is so often the case, the railroads which have been honestly and wisely managed have suffered from the acts of the others. Investors who have lost their money in one railroad are not generally eager to invest it in another.

One of the most potent causes of impaired railroad credit has been the unsoundness of railroad financial structures. By this I mean principally the unsoundness of the relationship between share capital and fixed capital and of the relationship between the value of the property and the face or par value of the securities outstanding.

A man who would expect to borrow \$120 on a horse worth only \$100 would be considered erratic, to say the least. Yet many railroads have been constructed entirely from bonds sold at a discount, and in addition have issued large amounts of capital stock without consideration. Railroad financiers have largely refused to invest any of their own money by purchasing stock, but have secured their funds from the public by selling bonds. When such railroads later needed funds for additions, betterments, and extensions they have found it difficult or impossible to secure them. They have been unable to sell stock because the outstanding stock represents little or no value, and unable to sell bonds because the outstanding bonds already exceeded the value of the property. Such a financial structure inevitably crashes. When the receivership comes it comes not by reason of regulation, but by reason of the absence of such regulation as would have prevented such unsound financiering.

Whenever a railroad is constructed where it is not needed the result is not merely financial disaster to it but also impairment of credit for its competitor whose revenues are diminished by the competition. Such construction leads to general impairment of railroad credit.

The glaring cases of criminal mismanagement of railroads by financiers and executives which have come to light within the last few years have been far more effective in impairing railroad credit than the combined effect of all public regulation, State and Federal. What is needed is more regulation, not less.

As contrasted with the generalizations of the railroads with reference to the causes of impaired railroad credit, the representatives of the public before the Newlands committee drew the attention of the committee, by reference to page and volume of the official reports of the Interstate Commerce Commission, to the real causes of impaired railroad credit, as shown by the official records of the Federal Government. The attention of the committee was drawn to the following decisions of the Interstate Commerce Commission and to the comments of the Commission on the causes of impaired railroad credit therein set forth.

"Harriman Investigation, 12 I. C. C., 319; New England Investigation, 27 I. C. C., 560; in re Receivership of St. Louis & San Francisco Railroad Co., 29 I. C. C., 139; St. Paul & Puget Sound Accounts, 29 I. C. C., 508; in re Financial Transactions of New York, New Haven & Hartford Railroad Co., 31 I. C. C., 32; and in re Financial Transactions of Chicago, Rock Island & Pacific Railway Co., 36 I. C. C., 43."

#### CONSTRUCTIVE REMEDIES.

A wise doctor first finds the cause of the patient's disease and then applies the remedy.

In the present instance the disease, as diagnosed by the railroads themselves, is impaired railroad credit. The cause of the disease is not public regulation, as claimed by the railroads, but principally their own financial transactions. The large amount of their issued securities as contrasted with the value of the property, the unsound relationship between share capital and fixed capital, the construction of railroads and their extensions at times where not needed and at times through construction companies yielding ill-gotten profits to the railroad financiers and executives, the diversion of the proceeds of securities to improper purposes, the deception of investors by the publication of misleading financial statements, and unfaithful stewardship of railroad finances by railroad financiers and executives. These acts by some railroads have affected all, even the increasingly large number which are honestly and wisely managed.

Having found the cause of the disease, the sensible thing to do would seem to be to apply the remedy to the cause. The first constructive remedy, in my opinion, is to provide for adequate and effective regulation by the Federal Government of the issues of capital stock, bonds, and other securities of all railroads engaged in commerce among the States and with foreign nations, and of their mergers, consolidations, sales, mortgages, and leases. This regulation

could be either concurrent with the States or exclusively in the Federal Government. The legislation might well be modeled on the statutes of a number of the States which are doing very effective work in supervising and regulating public-utility finances. This power, however, should not be conferred upon the Federal Government unless at the same time adequate machinery is provided so that applications of the railroads to issue securities can be promptly heard and disposed of by some responsible authority. No phase of public-utility regulation requires more prompt attention than financial matters such as proposed issues of securities.

Such a measure would go far to substitute sound financing for unsound financing in the future and would thus help to restore public confidence in railroad securities. But how about the past? How about the impaired financial structures which now exist, not because of regulation, but because of the absence of regulation?

The railroads, it appears, are trying to lay the foundation to support a claim hereafter for increased rates to enable them to pay interest and dividends on all their present outstanding securities, whether issued for value or not, and to establish new borrowing power for the future. In other words, the mistakes, the faults, and the crimes of railroad financiers and executives in the past are to be fastened on the public in the form of higher rates. In my judgment, the people of the United States will never consent to pay increased rates for any such purpose. The remedy in such cases is not higher rates, but reorganization of the railroad—reorganization on an honest basis under public authority with a view to the substitution for the existing unsound and impaired structure of a sound, healthy financial structure with a chance to succeed.

Furthermore, railroad credit would be much improved if the railroads, instead of crying calamity in the days of their greatest prosperity, should cease injuring their own credit and should adopt an attitude of optimism in lieu of their present attitude of assumed pessimism. Never before have I heard of business men needing funds for the enlargement of a prosperous business apparently trying to scare off every investor who is willing to assist in the further development of the business.

Finally, all public authorities, both State and Federal, must, of course, deal with the railroads in a spirit of sympathy and of broad constructiveness. Public officials represent the railroads just as much as they represent the traveling and the shipping public. The railroads are a very vital part of our industrial life and may hereafter become of supreme importance in the national defense. The interests of the Nation require that our railroad systems be at all times adequate and effective.

The railroads, however, must do their part. They must cease bearing false witness against the public authorities, State and Federal. They must play the game openly and honestly, with every card on the table, face up. They must cease crying calamity when there is no calamity.

If the railroads fail to do their part, or if, notwithstanding good faith on their part hereafter, it appears that because of their financial structures and management in the past they are unable to do their full duty without unjustly high rates, there is only one alternative—Government ownership.

The situation should be most carefully watched. In view of the possibility that private ownership may break down, the wisdom and patriotism of our statesmen will prompt them to take steps at once to study Government ownership in its every aspect, and to make provision so that if Government ownership of the railroads comes it will find the American Government and the American people ready to handle the new problem efficiently, wisely, and patriotically.

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[Utilities Magazine, January, 1917.]

THE PROBLEM OF TERMINAL RATES.

By ROBERT J. McFALL, *University of Minnesota.*

Matters of far-reaching consequence are brought into the foreground by a recent case before the Interstate Commerce Commission. The authorities of the State of New Jersey have filed a petition to require the rates for traffic ending on their side of New York Harbor to be readjusted, giving recognition

to the fact that it costs more to carry goods to the New York side of the river than to leave them on the Jersey side. The problems involved were suggested in the Lighterage and Storage Regulations at New York case decided by the Interstate Commerce Commission on July 7, 1915; they are now introduced in more elaborate form and are as yet unsettled, even in so far as this specific case is concerned.

The Associated Press reports this case as a battle for commercial supremacy between the States of New York and New Jersey. This, in so far as true, is an important issue. Commissioner Lane, in writing the opinion of the Interstate Commerce Commission for the Western Advance Rate case, spoke of the traffic manager as a statesman determining zones of production and consumption and setting aside the spirit of the laws of the land. In the case here considered the commission itself performs the function of the statesman, and the issues involved are of greater consequence than those spoken of in the former case. The real problem involved is not the comparative importance of two areas in the Nation; it is a problem which goes so far as to affect the social and economic status and growth of the whole Nation. According to Mr. Brandeis, the terminal problem is more trying even than the notorious rising costs of labor.<sup>1</sup>

The problem is the proper adjustment between terminal costs and rates. Should rates to a terminal be framed on the basis of cost? If it costs more to take freight into New York City than into the near-by cities of New Jersey, should recognition of this fact be made in the establishment of rates? The authorities of the State of New Jersey have filed a petition seeking "to so readjust and reorganize the port (of New York) as between New York and New Jersey territory, as to put into intensive use all the natural conditions, and give to the New Jersey side advantages which nature has provided."<sup>2</sup> They claim that the present rate system, making the whole general region, including both New York and New Jersey points, a blanket zone which takes exactly the same rates irrespective of costs is a serious discrimination against New Jersey. The Engineering News says:

"The present railway rates entirely ignore the high cost of terminal handling in large cities. Freight rates on a carload of goods hauled between Chicago and a factory located in Newark, Paterson, Jersey City, or Hoboken are the same as if the freight had to be lightered across the Hudson River to or from a factory on Manhattan Island or in Brooklyn. Since railway rates must, on the whole, be sufficient to pay all the operating expenses, fixed charges, and profits of the railways, it follows that the merchants and manufacturers of Jersey City, Hoboken, and Newark are actually paying in their freight rates part of the cost of carrying goods for their competitors located on the eastern side of the Hudson River."<sup>3</sup>

The authorities of the State of New York have filed an intervening petition, saying:

"If the prayer of the petitioners were granted, it would, in fact, result in unreasonable discrimination against the city of New York. The commercial, industrial, marine, and manufacturing facilities of Greater New York are inextricably bound up with the prosperity of the country. To serve the country, New York City early became a natural base and distributing center, through which passes commerce to and from all parts of the world. It was inevitable that in fixing railroad rates Greater New York should be a basing point, around which territory contiguous would naturally form a zone or district. Following the American method of rate making, very early in the history of New York's commerce, the port of New York, including a large part of Long Island, Staten Island, and New Jersey, became a zone or district, in which were generally established fixed schedules for freight carriage, including terminal service. To furnish the terminal service at all points within the district involves at some points a loss; but in general, because of the volume of business thus accommodated, results in a profit and in lower general rates. To adopt a new system based upon a separate charge for line haul plus a separate charge for terminal service, would demoralize the entire commercial situation, to the injury not only of Greater New York but also of its neighbors in New Jersey and its business connections throughout the country."<sup>4</sup>

<sup>1</sup> Interstate Commerce Commission, Five Per Cent Case, S. Doc., v. 14, 63d Cong., p. 5253.

<sup>2</sup> Intervening petition of the State of New York before the Interstate Commerce Commission, p. 2.

<sup>3</sup> Engineering News, v. 76 (July 20, 1916), p. 129.

<sup>4</sup> Intervening petition of the Chamber of Commerce of the State of New York, pp. 8, 14.

## THE AMERICAN SYSTEM OF RATE MAKING.

The problem raised is not only local; it has its application in every section of the country. Should each locality pay for its railway service in accordance with what it costs to supply such service, and so stand on its own feet? Should we perpetuate the situations established by former insane competition between carriers, a competition now relegated to the scrap heap? Should we leave it to traffic managers, even supervised by the commissions, to determine arbitrarily zones of production and consumption by the rate-making powers? Or shall we leave the matter to be decided by the battle of the Titans, the struggle between the powerful commercial interests of competing localities, a struggle in which the lowly are trampled under foot?

The Engineering News deals with the problem over-summarily when it says that "every one recognizes that transportation rates should be based on the cost of service plus a fair profit to the transportation company."<sup>1</sup> We know that there are joint costs in the railway business that no one has yet been able to allocate between the various parts of the service, whether as between localities or between various services. These costs, it is pretty generally admitted, should be borne in accordance with the comparative ability of the service or localities to bear them. As a matter of fact, as between localities, these costs are generally borne in accordance with the comparative ability of the localities to avoid bearing the charges. Then, too, it is pretty generally admitted that a zone system of rate making, putting all places of similar cost and in similar situations on the same rate, is not only fair but the only way to avoid endless difficulties of accounting the rate adjustment. The question here is as to how inclusive the zone should be. New York claims that the two States should form one zone. New Jersey considers that the costs for service of the two regions are so dissimilar that they should form two separate zones, not that the zone system should be given up.

Greater attention is being paid recently, however, to the costs of service in rate making, one great reason for this being that costs have been rising and making themselves more prominent. Not only have the prices of railway supplies and labor been rising along with our general rise in prices; the more striking thing is that while the traffic density on our railways has doubled within these last 15 years, the cost per unit of handling this traffic has also increased. A most unorthodox thing for railway costs to do! Economists have always said that the railways implicitly obeyed the law of diminishing costs; that as the traffic increased the cost per unit of handling this traffic always decreased. So long as this was true, and it really was true in general until recently, it can easily be seen why the rate makers should care so little about what each item of service cost. The main thing was to get the traffic; let the cost be borne as best it might. Recently, however, we have been awakening to the fact that, while our traffic has been growing by leaps and bounds, the cost per unit of caring for it has not decreased, but actually increased. Under such circumstances we must more carefully scrutinize the costs. If costs are rising per unit, it is not profitable to stimulate greater traffic unless we can also raise rates. Under rising costs per unit each element of traffic must more nearly take care of itself. Hence railway men and commissioners alike are paying attention to the cost of each kind of service as they never did before. For a time they blamed the rising costs on the wages of the laborers. They still do, but see now that this is not the only cause. The extraordinarily heavy and rising terminal charges now come in for their share of the blame, and justly so. The contention is that, in so far as the costs can be allocated to the terminal service, they should be borne by the particular terminal traffic in question. The problem involves not only finding out what terminal charges are in general, but the relative costs of handling traffic as between different terminals, particularly the relative costs of the service in small stations as compared with large terminals.

What is this which the New York intervening petition calls the "American method of rate making"? The Engineering News says:

"The present system of railway rates is based primarily upon distance. It harks back to the time when the railway was the competitor of the stage-coach. The cost of hauling over the road was then the main expense in transportation, and the cost of handling at terminals was trifling. The last half century has revolutionized these conditions. The cost of hauling traffic over

<sup>1</sup> Engineering News, v. 79, p. 129.

the road has been reduced to a mere trifle, while the cost of handling in the terminals of great cities has been multiplied manyfold."<sup>1</sup>

This is perhaps as fair a statement as could be made of the situation the country over, but no one statement would cover the rate-making systems of the whole country. The Engineering News's presentation of the matter is entirely too mild to fit the situation in the South, where not only is no account taken of terminal costs in general, but the rates are made much less even to the terminals than between intervening points; this in spite of the long-and-short-haul clause in the act to regulate commerce. The rates on traffic to a point through which the goods would be hauled on going to a terminal—that is, on the route—are made by taking the rate to the terminal and adding the local rate for the back haul; this even though the goods are not taken to the terminal for redistribution, and in a territory where the plea that the practice is due to carload ratings for the jobbing business of the larger places is singularly inapplicable. In the South one would think it cost less than nothing to handle the traffic at the terminal. The South is not the only region where this system is used, but is the outstanding example of it.

The transcontinental rate system violates not only the cost principle as regards terminals, but violates the distance principle as well. There, as in the South, the attempt has been made to base the rates on certain points, making the rates for intermediate cities the rate to the basing point plus the back-haul charge. Though this has been modified by the Interstate Commerce Commission to a certain extent, yet the mountain cities still pay higher rates than those on the coast. The distance principle has also been violated here by a gigantic application of the zone system of rate making. As Prof. Ripley says, "For some years every city east of the Mississippi has been able to ship goods to San Francisco at the same rate which is paid from Boston and New York, which may be more than a thousand miles farther away."<sup>2</sup> Of course, to the extent that the distance has been ignored, we would naturally assume that the terminal cost held a comparatively greater importance. This is in reality untrue; the rates are built as commercial pressure dictates.

The northeastern section of the country, known as trunk-line territory, is the only section which pretends to take real account of both the distance principle and the terminal cost. Here the rates are built on the New York to Chicago rate as a standard, using a fixed terminal cost that is totally inadequate at present and pays no attention to the widely different amount of this cost at the various terminals, and a hauling charge varying in accordance with the relation which the distance between the places in question bears to the standard New York to Chicago distance. The rates to the great terminal cities of Boston, New York, Philadelphia, and Baltimore are related to each other on the principle of commercial competition, a certain standard differential being given the rates of each city as compared with the New York rates.

#### TERMINAL COSTS NEGLECTED IN RATE MAKING.

Thus we see that hitherto but little attention has been paid to the terminal costs in making up rates. In fact, the Interstate Commerce Commission does not require any separate attention to be paid to terminal costs in the accounts which it requires under the law, and the railway men would have it that if we want knowledge of the comparative importance of terminal costs we must turn to either Japan or Australia. The officials of one of the important systems, who really have made important statistical investigations, say that they do not know the relative importance of the costs of large and small terminals though they have carefully computed the average terminal costs in the southwestern part of the country.

The railway men are exceedingly diffident about telling what they know on the subject, or even whether or not they know anything at all. This is not to be wondered at; they fear what the over-zealous cost statistician might do with the figures if he had them, and, doubtless, they feel that their figures are not yet sufficiently accurate to be of much value in rate making. It must not be inferred, however, that no statistics for terminal costs are known, nor that they are not used in rate making. Much is known on the subject and is being used by the various parties concerned in the question.

<sup>1</sup> Engineering News, v. 79, p. 129.

<sup>2</sup> Ripley, *Railroads: Rates and Regulations*, p. 397.

The widest application of the principle of special attention to terminal costs, in theory if not in careful practice, is found in the system in vogue in trunk-line territory, the MacGraham scale, as outlined briefly above. The Wisconsin system of rate making takes account of the terminal costs as carefully as possible with the data at hand.<sup>1</sup> The Interstate Commerce Commission also has made use of the principle in special cases, though it has not committed itself to its general application nor has it required such statistics to be kept.

In the *New Orleans Vegetable Growers, Merchants & Shippers' Association v. Illinois Central Railroad Co. et al.*<sup>2</sup> the Interstate Commerce Association took account of the figures presented to it on terminal costs in determining the reasonableness of the rates involved. The Commission took account of the relatively high terminal expense in the *Eastern Live Stock case*;<sup>3</sup> they also took account of the terminal cost figures supplied in the *Shreveport case*,<sup>4</sup> although questioning their accuracy. In the *Boardman Co. v. Southern Pacific Co. case*<sup>5</sup> the commission said: "The right to impose a reasonable and nondiscriminatory charge in addition to the line-haul rate for terminal services performed by connecting carriers was recognized in the Pacific Coast Switching cases and has been affirmed by numerous decisions of the commission and the courts." A separate charge for switching and other terminal expenses is more common in the case of connecting carriers than if the whole service is performed by one company, although under such circumstances it is exceedingly common for the carrier to "absorb" the extra charges and not pass them on to the patron.

Enough has been said to show that the terminal costs have played a comparatively small part in American rate making, although they have not been totally neglected as a separate element, as the intervening petition of the Chamber of Commerce of the State of New York would intimate. It is safe to say that increasing interest is being directed to this large element of railway costs these last few years as the traffic per unit, in spite of its growing density, has become more expensive to haul. It would appear that this change from diminishing cost to increasing cost per unit of traffic was due, in addition to the part played by rising wages and taxes, to the increasing complexity and consequent costly handling in our large terminals. Unquestionably both the actual cost of handling and the overhead expenses due to expensive terminal facilities and real estate are very high and rising at a rapid rate. It would appear that this concentration to the point of congestion of our business in large centers made the costs of this phase of the business mount up so increasingly high with increased traffic as to offset the economies which are constantly being achieved in our line traffic.

#### THE COSTS OF TERMINALS.

What are the comparative costs of terminals and terminal handling? Droege said in 1912, in his *Freight Terminals and Trains*, "For every 3 miles of railroad there is in use to-day 1 mile of switching or terminal tracks."<sup>6</sup> He also shows how this proportion has been growing rapidly and is much greater in the more densely populated regions of the Northeast. He says in regard to the money invested in terminals, "The terminals alone represent a greater amount of money than all the remainder of the properties of the roads. This statement is true even when smaller or intermediate stations are omitted and only the great water terminals and general intermediate distributing centers, known as division terminals or yards, are included."<sup>7</sup> In the *Minnesota Rate case* the terminal property of the Northern Pacific Railway Co. was put at \$17,315,000, the land outside of terminals at \$3,708,000. The figures for the Great Northern Railway Co. were \$19,847,000 for the terminals and \$5,325,000 for the land outside of terminals.<sup>8</sup> Droege says in his recent book, *Passenger Terminals and Trains*:

"The American railroads have frequently been criticized for having lavished such great amounts of money on their passenger stations, or, as one authority has aptly said, they have indulged too much in 'gilded stairs and

<sup>1</sup> The Amer. Econ. Assn. Publications, 3d ser., v. 9 (1908), 98.

<sup>2</sup> 34 I. C. C. Rep., 38.

<sup>3</sup> 30 I. C. C. Rep., 675 (692).

<sup>4</sup> 41 I. C. C. Rep., 91-94.

<sup>5</sup> 37 I. C. C. Rep., 81 (85).

<sup>6</sup> Page 1.

<sup>7</sup> Page 8.

<sup>8</sup> Minnesota Rate case, Opinion of Supreme Court of U. S., pp. 40, 53.

marble halls.' It is certainly true that this is one thing on which the railways do not skimp. The recently completed Union Station at Kansas City cost \$40,000,000, of which \$11,000,000 was spent on the station itself. It has been said that some of the lines which use the terminal pay more for the privilege than they receive in gross receipts from their entire Kansas City passenger traffic. The New York Central's passenger terminal facilities in New York when completed will probably have cost approximately \$200,000,000, sufficient to build 2,000 miles of double-track railway line costing \$100,000 a mile. It has been estimated that the fixed charges, taxes, and depreciation will total \$20,000,000 yearly and the operating and maintenance expenses \$3,000,000 more. The total passenger receipts of the New Haven and New York Central from New York City traffic certainly do not total much more than this. The Pennsylvania's terminal on Manhattan has cost between \$110,000,000 and \$120,000,000. One authority has made the statement that the terminal charges are about equal to the entire gross receipts of the Pennsylvania and Long Island from passenger traffic in the city. It has been further shown that the passenger terminals in which the Pennsylvania is interested in Washington, Baltimore, New York, and Philadelphia have a combined value of \$178,000,000 equal to an average of about \$800,000 per mile for the 223 miles from New York to Washington."<sup>1</sup>

The terminal properties, while enormous in their value, unfortunately will have to be expanded still more, according to foremost authorities. The late Mr. James J. Hill said in an address before the Railway Business Men's Association in New York December 19, 1912:

"Every interest and every community should understand that the main need to-day of transportation and of the many activities connected with and dependent upon it as an increase of terminal facilities. It is no exaggeration to say that the commerce of the country, its manufacturing and agricultural industry, its prosperity as a whole, and the welfare of every man in it who engages in any gainful occupation, can escape threatened disaster only by such additions to and enlargements of existing terminals at our great central markets and our principal points of export as will relieve the congestion that now paralyzes traffic when any unusual demand is made upon them."<sup>2</sup>

We need not, however, depend alone on the word of American railway men for opinion on this subject. Mr. W. M. Acworth, a prominent and impartial British authority in a recent statement to the American public through the National City Bank publication, said: "You will have to spend vast sums of money to enlarge and improve your terminal accommodation, and the land required for the purpose you will have to buy and adapt at modern prices."<sup>3</sup> The truth of this will be the more readily appreciated in view of the present unprecedented car shortage. The Iron Age said of the congestion of 1902: "The transportation facilities of the country broke down under the weight of prosperity in 1902 and 1903, not so much because the supply of locomotives and cars was insufficient, though that was a factor, as from the utter inadequacy of terminal facilities."<sup>4</sup> If this was noteworthy of the 1902 situation, what of the present when we are experiencing such a serious shortage of rolling stock?

#### THE COST OF HANDLING TRAFFIC AT TERMINALS.

In regard to the cost of handling the traffic at the terminals we can not do better than to draw our facts from the statements of Mr. Brandeis before the Interstate Commerce Commission in recent important rate cases. Mr. Brandeis as is commonly known, has won much fame from the prominent part which he has played in fighting proposed rate increases. The New York Times, in an editorial of November 14, 1916, in quoting Mr. Brandeis, says: "Terminal costs absorb 80 per cent of the total rate and leave nothing for the haul. In one case named by him, the terminal costs being deducted from the rate of 4 mills, there remained seven-tenths of a mill for the haul of 428 miles. If the cost for foreign cars also were deducted there remained, according to Mr. Brandeis, nothing for the maintenance of the tracks."

In the Five Per Cent case Mr. Brandeis testified as follows:

"As Mr. Delano has pointed out so clearly in his statement, various parts of which are quoted in the brief, it came to a point where the switching cost in

<sup>1</sup> Page 7.

<sup>2</sup> Amer. Ry. Eng. Assn., vol. 15, pt. 2, p. 29.

<sup>3</sup> Circular of Nat'l City Bank of N. Y. for July, 1916, p. 3.

<sup>4</sup> Iron Age, Sept. 7, 1905.

Chicago equaled and sometimes exceeded the total amount which the railroad received for carrying the freight. There you have an extraordinary situation.

"When you come to the less-than-carload lots you have an even more serious situation in many respects. There you have the situation which bred ferry-car service, by which you had the switching from a place of business of less-than-carload lots from one railroad not only to another railroad, but sometimes through a third to another railroad, and all at the expense of the carrier who made the haul. \* \* \* What is certain, and what nobody for a moment could controvert, is that these practices, which have grown up as an incident to the creation of these great cities like Chicago, have increased the terminal cost so much as to make a large part of the traffic not only unremunerative but practically free, so far the the haul from place to place is concerned.

"There is quoted in this brief a most illuminating statement also of Mr. Pfeiffer, counsel for the Chicago & Eastern Illinois, in regard to that situation. He shows that not only is this true in respect to business destined to Chicago or shipped from Chicago, but that it is true of much of the business that passes through Chicago to other points beyond. He says that he can furnish proof that on less-than-carload business from Pittsburgh to Milwaukee the cost of handling that business in Chicago—I mean incidental cost—is more than the total amount paid for the haul from Pittsburgh to Milwaukee, and that Pittsburgh and Milwaukee are cities in which the terminal costs are considerable, or certainly in one of the cities the terminal costs are considerable.

"But Mr. Maxwell testified on this subject in a very clear and convincing way. He showed that in regard to an appreciable part of the business on the Wabash the terminal cost at Chicago ate up everything; that the terminal cost in Chicago on some of the coal which came from the mines left nothing, not enough to pay for the interest and depreciation charge on the equipment which was used in carrying the coal from the mines; that after paying the switching charges there was but \$3 left, and there had been a haul of 200 miles. The average cost of a freight car, considering its service, is over 2 cents a mile. Here there was only a cent and a half for the cost of hauling, for the terminal cost at the other end and a return on the capital invested. The terminal cost at Chicago had absorbed practically everything.

"Mr. Johnstone, of the lake lines, showed exactly the same thing. He showed how, in this period from 1903 to 1913 the cost of switching which the lake lines had to absorb had more than doubled, almost trebled—from \$4.50 up to about \$12 a car."<sup>1</sup>

Mr. Brandeis then shows that the lighterage and other special New York terminal services have risen in cost from 2 cents of 30 or 40 years ago to 6 cents a hundred pounds at present, which means \$26.40 a car, for taking the car from the New Jersey side of the river into New York. Just what proportion of the revenue that is would depend upon the rating and origin of the car, but he thinks that in the average case this would mean that 33 per cent of the total revenue from the car was taken up by the extra cost of getting it into New York. He continues:

"That is one of the changes which Mr. Willard has had to battle against when he has been trying, through greater efficiency, to meet these rising costs. It is not the increasing cost of labor. Those costs he can meet in the larger part, but it is the increase in the cost of these other free services which are coming along and which are extending all the time, and the cost of which is extending. \* \* \* The lighterage district of New York has been extended and the haul made longer. How can the efficiency in train movement overcome such things as that? Mr. Willard battles in vain with such leeches and such burdens as that upon his traffic. Taking the Erie Railroad, which is one of the great sufferers here, we find that 25 per cent of the freight revenues are on business destined to or shipped from New York City. You have in the East just the same situation as you have in Chicago in the West.

"These conditions have developed and grown up year by year, the costs are becoming greater, and no general increase in freight rates can keep pace with such leeches upon the service.

"I took New York and Chicago because they are the most important centers in the country, and conditions are perhaps worse there than elsewhere. But what is true of New York and Chicago is true of these other cities, and it presents itself in different forms in different cities. We took Buffalo, we took

<sup>1</sup> Interstate Commerce Commission. The Five Per Cent case, S. Doc., v. 14, 63d Cong., p. 5251.

Toledo, we took Philadelphia, and in every one of those places you will find these or other similar leeches upon the revenue, growing and eating into the vitals of these railroads."<sup>1</sup>

Others could be quoted showing the immense and growing part which terminal costs are playing in our transportation service. The problem is growing; it is greater in our large cities than in the smaller ones. Undoubtedly the terminal service is not one that is subject to decreasing costs per unit of service as the service is increased; it apparently follows exactly the opposite rule. As traffic increases in the large terminals, it becomes increasingly more costly per unit to handle it; complexity and congestion bring decreasing economics in their train.

#### BANEFUL EFFECTS OF NEGLECTING TERMINAL COSTS IN RATEMAKING.

And yet the present system of neglecting costs in rates to terminals is artificially stimulating the growth of these large centers. The burden of transportation cost is on the business of the country in general; the large center gains the advantage. The large centers getting their service at less than cost, the general business of the country is taxed to build up the large cities, to perpetuate and increase a more expensive system of conducting our business, to make their burdens in turn still greater to support these centers in the future. We may be sure the railways themselves do not pay this extra cost. They can not. They are not in the charity work.

The Chamber of Commerce of New York claims for New York the share of 46.59 per cent of the foreign commerce of the United States; it claims that in 1900, with 5 per cent of the population of the country, the city of New York had nearly 10 per cent of the industrial establishments of the country, while the value of its products was almost 10 per cent of the Nation's.<sup>2</sup> And so, forsooth, it claims that a system of ratemaking should be perpetuated which would continue the present rapid stimulation of our large centers and urban population at the expense of the rest of the country.

The battle between cities for commercial supremacy is an important thing; it is trivial as compared with some other matters. The present system artificially stimulates the growth of our cities and consequently our manufactures at the expense of our agricultural life. Stimulating the growth of our large industrial centers it stimulates a more expensive way of conducting our transportation, and proof could be cited, did space permit, to show that the industrial life itself becomes more complicated, and hence more costly, in these large centers built upon a bonus from the rest of the country.

Lack of extra remuneration for terminal services has made the carriers more cautious in laying out money in developing this branch of the service, so that in spite of the immense sums which they have expended recently the United States faces a shortage of terminal facilities and consequently is in the pangs of a car famine.

Other and perhaps more serious consequences might be spoken of, but enough has been pointed out to show the importance of the problem.

What, then, is the solution? Should we reorganize our rate systems, giving full weight to the different terminal costs? Such a thing would be impossible. We can, however, and it would seem as though we must, give full weight to the increases in costs as these occur in the future. The conclusion may, and probably will, be reached that part of the extreme costs now involved in the terminal services shall be borne by the services in question. The future increments of such costs certainly should not be borne by the service in general, but by the terminal traffic itself.

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[Utilities Magazine, March, 1917.]

#### FEDERAL INCORPORATION OF RAILROADS.

By MAX THELEN, President National Association of Railway Commissioners.

One of the most important public-utility problems now before the American people is the proposal of the railroads that the Federal Congress enact legisla-

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<sup>1</sup> Interstate Commerce Commission, The Five Per Cent case, S. Doc. v. 14, 64d Cong., p. 5253.

<sup>2</sup> Intervening petition of Chamber of Commerce of New York, pp. 3, 7.

tion compelling each railroad to any extent engaged in interstate commerce to secure, in lieu of its present State charter, a charter from the Federal Government.

As nearly every railroad in the United States is to some extent engaged in interstate commerce, this proposal would result in the transmutation of practically every railroad corporation in this country from a State corporation to a Federal corporation.

#### INTERESTING QUESTIONS.

The proposal for Federal incorporation of the railroads presents some very interesting questions.

Is the withdrawal from the States of practically all their powers over railroads—the avowed purpose of the Federal incorporation plan—desirable?

What will be the effect of Federal incorporation of the railroads on the powers now exercised by the States with respect to purely State commerce?

Will the Federal incorporation of the railroads enable the railroads to remove themselves from State jurisdiction over purely State commerce, without amending the commerce clause of the Federal Constitution?

Is the particular plan of Federal incorporation advocated by the railroads in the public interest?

What would be the effect on railroad rates and on the compensation hereafter to be paid by the Federal Government for the railroad properties if the Federal Congress should now enact legislation in effect compelling all railroads to take out national charters under a plan which perpetuates all outstanding railroad securities, including all the water therein?

These and many other interesting questions are involved in the plan of Federal railroad incorporation which is being urged by the railroads before the Newlands Joint committee of the Senate and of the House of Representatives.

It is not my purpose in this paper to discuss the merits of the proposal of the railroads to take from the States practically all their powers, even over purely State railroad business. This is a subject of very great importance which merits consideration in a paper devoted to that subject alone.<sup>1</sup> It is my purpose to consider in this paper, as succinctly as possible, the other questions just suggested.

#### NEWLANDS PLAN.

For several years Senator Newlands, of Nevada, has been urging the enactment by the Federal Congress of legislation providing for the Federal incorporation of railroads. Such incorporation, however, is to be only part of a comprehensive plan for the regulation of the relationship between the railroads and both Federal and State Governments, the railroads and their patrons, the railroads and their security holders, and the railroads and their employees.

The plan of Senator Newlands provides that any railroad corporation may secure a Federal charter, but only with the consent of the parent State; that the States shall retain their power to regulate the rates of purely State commerce and their power to enact police regulations with reference to such commerce; that the physical properties of the railroads shall continue to be taxable by the State wherein such properties are located; and that the new Federal railroad corporation shall issue, in exchange for the property of the State railroad corporation, securities not exceeding the fair value of the property to be transferred, as such value may be determined by the Interstate Commerce Commission.

The Newlands plan also provides for the establishment of an accident and insurance fund for the benefit of employees; for action by the Interstate Commerce Commission as a board of conciliation between the railroads and their employees; for the limitation of dividends to 7 per cent on the outstanding capital stock; and for the application of net earnings in excess of such dividends, betterments, extra dividends, or future inadequacy of earnings, as directed by the Interstate Commerce Commission.

<sup>1</sup> See article by Mr. Thelen on "The Newlands railroad investigation" in *The Utilities Magazine*, January, 1917.—The Editor.

## RAILROAD PLAN.

The plan of Federal railroad incorporation now being urged by the railroads before the Newlands joint committee omits, in my opinion, most of the commendable features of the Newlands plan, and apparently has in view solely the withdrawal of the railroads from the jurisdiction of the States and the perpetuation, by direct compulsion of the Federal Government, of all their outstanding securities, whether issued for value or not.

While the railroads have not as yet presented the details of their plan, its broad outlines clearly appear in the testimony thus far presented by them to the Newlands joint committee.

The railroads urge the enactment by the Federal Congress of legislation providing, in effect, that after a certain day no railroad in the United States shall be permitted to continue to engage in interstate commerce unless it has secured from the Federal Government a charter under a statute to be enacted by the Federal Congress; that such incorporation is to be compulsory, as distinguished from elective; and that the consent of the State from which the railroad holds its charter shall not be necessary.

The States are to be deprived of all their powers over railroads with reference to rates, service, safety, equipment, and facilities, the issue of securities, and every other matter affecting purely State commerce as well as interstate commerce, except that, as a matter of policy, the States are to be permitted "for the present" to retain their power to tax railroad property located within their borders and to exercise police powers over railroads and matters which are "not vital."

The new Federal railroad corporation is to acquire the property of the existing State corporation subject to all outstanding bonds and other indebtedness, and is to issue its capital stock in an amount equivalent to the entire outstanding capital stock of the State corporation. In a word, all the outstanding securities of the existing State railroad corporation, entirely without regard to their relationship to the fair value of the property or to the existing relationship between bond capital and share capital, are to be perpetuated in the form of the existing indebtedness, and new capital stock is to be issued by the Federal railroad corporation in an amount equivalent to the entire outstanding capital stock of the State railroad corporation without any regard whatsoever to its fair value, this to be done under compulsion of the Federal Government.

Each existing State railroad corporation is to be converted into a Federal railroad corporation, so that, except to the extent to which mergers or consolidations may later be authorized, there will be just as many Federal railroad corporations as there are now State railroad corporations.

## EARLY FEDERAL RAILROAD CORPORATIONS.

In four cases, ranging between 1862 and 1871, the Federal Government heretofore incorporated Federal railroad corporations. In each of these instances the railroad was incorporated by special act of Congress for the purpose of connecting the Middle West by rail with our Pacific coast possessions, and in each instance the Federal Government, by means of land grants and other considerations, gave generous assistance to the new railroad.

The first Federal railroad was the Union Pacific Railroad Co., which was incorporated by act of Congress of July 1, 1862, for the purpose of constructing a railroad from the one hundredth meridian east of Greenwich, west, to connect with Central Pacific Railway Co., a California corporation. (12 U. S. Stat. L., 489.)

The second Federal railroad was the Northern Pacific Railroad Co., which was incorporated by act of Congress of July 2, 1864, for the purpose of constructing a line of railroad from Lake Superior to Puget Sound, in the State of Washington, with a branch line to Portland, Oreg. (13 U. S. Stat. L., 365.)

The third Federal railroad was the Atlantic & Pacific Railroad Co., which was incorporated by act of Congress of July 27, 1866, for the purpose of constructing a line of railroad from Springfield, Mo., to Albuquerque, N. Mex., and thence to the Colorado River and to the Pacific Ocean. In the same act, the Southern Pacific Railroad Co., a California corporation, was authorized to connect with the Atlantic & Pacific Railroad Co. at the California State line. (14 U. S. Stat. L., 292.)

The fourth Federal railroad incorporated during the period hereinbefore referred to was the Texas & Pacific Railroad Co., which was incorporated by

act of Congress of March 3, 1871, for the purpose of constructing a line of railroad from Marshall, Tex., to San Diego, Cal. (16 U. S. Stat. L., 573.)

#### LEGAL PROBLEMS.

The proposed Federal incorporation of the railroads presents a number of very interesting legal problems.

That the Federal Government has the power, whenever deemed necessary in the exercise of a governmental function, to create a corporation has been unquestioned ever since the decision of the Supreme Court of the United States in the leading case of *McCullough v. Maryland* (4 Wheat., 316). The same doctrine was announced in *Osborn v. United States Bank* (9 Wheat., 737).

The power of the Federal Government to create a railroad corporation to act as its agent or instrumentality in the performance of a function of the Federal Government is equally clear. (*California v. Central Pacific Railroad Co.*, 127 U. S., 1.) The power of the Federal Congress to create a corporation for the purpose of constructing a bridge across navigable water between two States has likewise been upheld. (*Luxton v. North River Bridge Co.*, 153 U. S., 525.)

Many more legal problems in part as yet unsolved are involved in the plan of the railroads. Among the most important of these problems are these two: (1) The means to be used to transfer to the new Federal corporation the title to the property of the existing State corporation, with due regard to the rights of the stockholders of the State corporation; and (2) the effect of Federal railroad incorporation on the power of the States to regulate purely State commerce. I shall consider herein only the latter question. The effect of the proposed Federal incorporation of the railroads on the powers of the States will be considered with reference to various classes of State powers in the following order: Rates, taxes, securities, service, safety, and police regulations.

#### RATE POWER OF STATES.

The railroads frankly declare that it is their purpose to take from the States their entire power over railroad rates, specifically including their power over purely State rates. The railroads advocate the Federal incorporation of the railroads principally for the purpose of accomplishing this end and contend that the Federal incorporation of the railroads is a means adequate to accomplish their purpose.

The reports of the Supreme Court of the United States are full of decisions holding that under the commerce clause of the Federal Constitution the power of the Federal Government to regulate commerce is limited to commerce "with foreign nations, and among the several States, and with the Indian tribes," and that the States have the right to regulate purely State commerce as long as such regulation is not confiscatory and does not discriminate against commerce subject to the jurisdiction of the Federal Government.

The claim now urged by railroad lawyers that by reason of its control over the instrumentalities of interstate commerce the Federal Government has complete control over each railroad to any extent engaged in interstate commerce, even as to rates for purely State transportation, finds greater comfort in the hopes of these lawyers than in the decisions of the Supreme Court of the United States. It is unquestionably the prevailing opinion among well-informed constitutional lawyers that the railroads can not prevail in their campaign to take from the States their power over purely State commerce unless they shall first have persuaded the people of the United States to amend the commerce clause of the Federal Constitution so as to take from the States the powers which apparently have been reserved to them.

However, a number of decisions of the Supreme Court of the United States, dealing specifically with railroads incorporated by the Federal Government, lend strong support, on an entirely different theory, to the plan of the railroads. These cases strongly intimate that if the Federal Government, in incorporating a Federal railroad corporation, declares that such railroad shall be used for military purposes and shall be a post road, and clearly expresses the intention that such railroad shall not be subject to regulation by any State, such railroad will be subject to the exclusive control of the Federal Government in all matters, including purely State transportation. This conclusion is reached, apparently not under the commerce clause, but under the military power of the

Federal Government and under its power "to establish post offices and post roads."

In *Reagan v. Mercantile Trust Co.* (154 U. S., 413), decided on May 23, 1894, the Mercantile Trust Co. brought an action against the Railroad Commission of Texas and the Texas & Pacific Railway Co., to restrain the enforcement as against the Texas & Pacific Railway Co. of the railroad commission act of the State of Texas. The Mercantile Trust Co. was trustee under an issue of bonds of Texas & Pacific Railway Co. The Mercantile Trust Co. and the Texas & Pacific Railway Co. both earnestly contended that Texas & Pacific Railway Co., being a Federal corporation, was not subject to the control of the State of Texas, even as to rates for transportation wholly within the State. Mr. Justice Brewer, in presenting the opinion of the Supreme Court of the United States, held that this contention was unsound for the reason that there was nothing in the language of the act incorporating the Texas & Pacific Railway Co. to justify the claim that the Federal Government had shown an intention that this railroad should be removed from the jurisdiction of the State of Texas in purely State affairs. At page 416 of the Reporter, Mr. Justice Brewer says:

"Similarly we think it may be said that, *conceding to Congress the power to remove the corporation in all its operations from the control of the State*, there is in the act creating this company nothing which indicates an *intent* on the part of Congress to so remove it, and there is nothing in the enforcement by the State of reasonable rates for transportation wholly within the State which will disable the corporation from discharging all the duties and exercising all the powers conferred by Congress. By the act of incorporation Congress authorized the company to build its road through the State of Texas. It knew that, when constructed, a part of its business would be the carrying of persons and property from points within the State to other points also within the State, and that in doing so it would be engaged in a *business, control of which is nowhere by the Federal Constitution given to Congress.*" (Italics mine.)

Continuing Mr. Justice Brewer says:

"It must have known that, in the nature of things, the control of that business would be exercised by the State, and *if it deemed that the interests of the Nation and the discharge of the duties required on behalf of the Nation from this corporation demanded exemption in all things from State control, it would unquestionably have expressed such intention in language whose meaning would be clear.* Its silence in this respect is satisfactory assurance that, in so far as this corporation should engage in business wholly within the State, is intended that it should be subjected to the ordinary control exercised by the State over such business." (Italics mine.)

It will be observed that Mr. Justice Brewer was willing to concede, for the purpose of this decision, that Congress has the power to remove a Federal railroad corporation in all its operations from the control of the State, but that he based his decision on the fact that the charter of the Texas & Pacific Railway Co. did not show an intention on the part of the Federal Government to thus exempt the Texas & Pacific Railway Co. from State control in State affairs. This position of the Supreme Court is all the more significant in view of the fact that the briefs of counsel for Mercantile Trust Co. and the Texas & Pacific Railway Co. specifically drew the attention of the Supreme Court to the fact that the incorporation of the Texas & Pacific Railway Co. could be sustained not merely under the commerce clause, which clause has always been construed to contain a limitation reserving to the States the power to regulate purely State commerce, but also under two additional powers of the Federal Government, the one power being the military power and the other the power to establish post roads. Under the language of the Federal Constitution, neither of these two powers is subject to any limitation with reference to State lines.

In *Smyth v. Ames* (169 U. S., 466), decided on March 7, 1898, certain stockholders of Union Pacific Railway Co. brought an action against the railway and certain public officials of the State of Nebraska to enjoin the enforcement as against the Union Pacific Railway Co. of an act of the Legislature of Nebraska regulating railroads and fixing maximum freight rates. It was urged by the stockholders of the railway company that Union Pacific Railway Co. was a Federal corporation, and that under its charter the Federal Government had reserved to itself the exclusive control of rates, both interstate and purely State. Mr. Justice Harlan, in delivering the opinion of the Supreme Court of the United States, held that the language of the Federal charter could not reasonably be construed so as to reserve to the Federal Government these exclu-

sive powers. Mr. Justice Harlan refers with approval to the language hereinbefore quoted from *Reagan v. Mercantile Trust Co.*, and concludes, at page 522 of the Reporter, as follows:

"Until Congress, in the exercise either of the power specifically reserved by the eighteenth section of the act of 1862 or its power under the general reservation made of authority to add to, alter, amend, or repeal that act, prescribes rates to be charged by the railroad company, it remains with the States through which the road passes to fix rates for transportation beginning and ending within their respective limits."

This language contains a clear intimation that the Federal Government has the power, in incorporating a Federal railroad corporation, to reserve to itself complete authority over such corporation, even as to purely State commerce. The intention to reserve such power, however, must be clearly expressed in the act of incorporation.

In the *Minnesota Rate Case* (230 U. S., 352), decided on June 9, 1913, Mr. Justice Hughes, on page 425 of the Reporter, refers as follows to the contention of the *Texas & Pacific Railway Co.* in the *Reagan case*:

"It was insisted that this company was 'not subject to the control of the State, even as to rates for transportation wholly within the State,' the argument being that it was not within the State power to limit the Federal franchise to collect tolls. But the court held that the act of Congress did not go to the extent asserted but left the company, as to its intrastate business, subject to State authority."

Three times the Supreme Court of the United States, speaking successively through Justices Brewer, Harlan, and Hughes, has thus clearly intimated that if the Federal Government in incorporating a Federal railroad clearly expresses the intention that such railroad shall not be subject to State control, the States will have no power over the railroad, even as to purely State commerce. It may be urged that in none of these three cases was the point necessary to the decision and that it would be a more sound doctrine to limit the exclusive control of the Federal Government under the military power and under the power to establish post roads to matters of a military and postal nature, and to hold that with reference to other classes of commerce the limitations of the commerce clause must govern. But it may be suggested that this qualification was not made in the decision in any of the three cases hereinbefore cited.

In view of these three decisions, I consider it to be entirely unsafe to support the proposition of Federal incorporation of the railroads on the assumption that the power of the States over purely State commerce can not be taken from the States, even under Federal incorporation, without an amendment to the commerce clause of the Federal Constitution. If the plan of Federal incorporation of the railroads should be successful, the railroad lawyers will undoubtedly argue before the Supreme Court of the United States, in confident reliance on the three decisions hereinbefore cited and on language showing the intention of the Federal Government, to be inserted in the statute, that the railroads have been entirely removed from control by the States, even as to all purely State matters, with the sole exception of the taxing power and police powers in matters "not vital," it being the intention at present to so word the general statute as to reserve these two powers to the States.

#### TAXING POWER OF STATES.

As already indicated, the railroads are willing, as a matter of policy, to leave to the States, "for the present," their power to tax railroad property.

That the railroads could thereafter, by simply amending the Federal incorporation statute, take this power also from the States, would seem to be clear from the decisions of the Supreme Court of the United States.

In *Thompson v. Union Pacific Railroad Co.* (9 Wall., 579), it was urged that the *Union Pacific Railway Co.*'s property in Kansas was exempt from the payment of taxes levied by the State of Kansas, not under any specific language in the act of Congress incorporating this railroad but "from the relations of the road to the General Government."

The Supreme Court of the United States, speaking through Chief Justice Chase, distinguishes between the instrumentalities employed by the Government and the property of the agents employed by the Government and holds that as long as Congress has not interposed to protect from State taxation the physical property of a Federal railroad corporation such property may continue to be taxed by the State. However, at page 589 of the Reporter, the Chief Justice holds that Congress may "exempt, in its discretion, the agencies

employed in such services (referring to Federal railroad corporations from any State taxation which will really prevent or impede the performance of them." And on page 590 of the Reporter the Chief Justice holds that "in the absence of express legislation to that effect" Federal railroad corporations continue, with reference to their physical property, to be subject to State taxation.

In *Railroad Co. v. Peniston* (18 Wall., 5), the Supreme Court of the United States held, by a divided court, that the public authorities of the State of Nebraska might levy taxes on the physical property of Union Pacific Railroad Co., a Federal railroad corporation, but not on its operations in the State. Justices Strong, Clifford, Miller, and Davis held that the State tax under consideration was valid because it was merely a tax on the tangible property of the railroad and not on its operations. Mr. Justice Swayne concurred solely on the ground that Congress had not granted to Union Pacific Railroad Co. exemption from State taxation, but added that this railroad corporation "is a national instrumentality of such character that Congress may interpose and protect it from State taxation whenever that body shall deem it proper to do so." Justices Bradley and Field, dissenting, held that under its Federal charter the Union Pacific Railroad Co. is exempt from all State taxation. Mr. Justice Hunt also dissented. It seems entirely clear that if the Federal act incorporating the Union Pacific Railroad Co. had expressly exempted this railroad from State taxation, the State of Nebraska would have been deprived of the right to tax even the tangible property of Union Pacific Railroad Co. located within its borders.

In *Central Pacific Railroad Co. v. California* (162 U. S., 125) the Supreme Court of the United States said:

"It may be regarded as firmly settled that although corporations may be agents of the United States their property is not the property of the United States but the property of the agents, and that a State may tax the property of the agents, subject to the limitations pointed out in *Railroad Company v. Peniston*."

The Supreme Court then continued as follows:

"Of course, if Congress should think it necessary for the protection of the United States to declare such property exempted, that would present a different question."

From these authorities the conclusion may fairly be deduced that if the Federal Government, in providing for the incorporation of a Federal railroad, should clearly express the intention that such railroad shall not be subject to State taxation, no State would thereafter have the power to tax such Federal railroad corporation, not even its tangible property located within the borders of the State.

#### POWER OF STATES OVER SECURITIES.

That the Federal Government, under a plan of Federal incorporation of the railroads, could provide by appropriate language for executive control over the issue by such railroads of capital-stock bonds and other evidences of indebtedness seems entirely clear.

The Supreme Court of the United States has frequently held that whenever the Federal Government enacts legislation providing for regulation in a particular field of interstate commerce the States may not thereafter lawfully exert any authority in that particular field of interstate commerce. *Northern Pacific Railway Co. v. State of Washington* (222 U. S., 370); *Southern Railroad Co. v. Railroad Commission of Indiana* (336 U. S., 439.)

The matter would seem to be too apparent to necessitate further discussion.

#### POWER OF STATES OVER SERVICE.

At the present time the various States exercise important powers with reference to the service equipment and facilities of railroads. These powers include matters such as the quality and adequacy of the service; the adequacy of equipment, both passenger and freight; the construction, heating, lighting, and sanitation of depot and station buildings; the number and stopping of trains; the construction of spur tracks; and the construction of physical connections between railroad tracks.

Under the decisions hereinbefore referred to the Federal Government under a plan of Federal incorporation of railroads could provide that these powers even as to purely State commerce could be completely withdrawn from the States.

## POWER OF STATES OVER SAFETY.

The States likewise exercise important powers over safety of railroad construction and operation from the point of view both of the railroad employees and of the traveling public. These powers include such matters as the investigation and prevention of railroad accidents; the establishment of proper operating rules; the maintenance of proper clearances, both vertical and horizontal; the installation of block or other signals and of interlocking devices; the condition and manning of equipment; and the safety of the construction and operation of railroad crossings.

Under the decisions hereinbefore referred to, the use of appropriate language in the Federal incorporation act would presumably withdraw from the States the exercise of all these powers over all railroads to any extent engaged in interstate commerce.

## POLICE POWERS OF STATES.

The States at the present time exercise important police powers, applicable to railroads, with reference to health, safety, and morals. Although some constitutional lawyers have expressed the opinion that the Federal Government can not interfere with the exercise by the States of their so-called "police powers," this view is in conflict with the decisions of the Supreme Court of the United States. The law of the land, as expressed by these decisions, undoubtedly is that as to interstate commerce the Federal Government has the power to enact regulations which shall supersede the police powers of the States. *Hipolite Egg Co. v. United States* (220 U. S., 45); *Hoke v. United States* (227 U. S., 308); *Sligh v. Kirkwood* (337 U. S., 552); *Seven Cases of Eckman's Allevative v. United States* (239 U. S., 510).

A familiar case of the exercise of State police powers over railroads is to be found in the laws of many of the Southern States providing for separate coaches for whites and blacks. Under the decisions hereinbefore cited, the Federal incorporation act, either as originally adopted or thereafter amended, could undoubtedly provide that with reference to this matter as well as all other police matters the State should thereafter exercise no power whatsoever, in so far as any railroad to any extent engaged in interstate commerce is concerned.

## EFFECT OF RAILROAD PLAN.

With reference to the effect of the railroad plan on the powers now exercised by the States, it may be said that if the doctrine announced in the *Reagan* case and subsequent cases should be applied by the Supreme Court of the United States, the Federal Government, by the use of appropriate language in the Federal incorporation act, could deprive the States of all powers of any character whatsoever over any railroad to any extent engaged in interstate commerce.

The plan as actually proposed by the railroads is to deprive the States, "at present," of all such powers, with the exception only of the power to tax and the power to enact "nonvital" police regulations.

The effect of the railroad plan on the financial structures of the railroads themselves is a matter which requires the most serious consideration. The railroad plan provides, in effect, that the new Federal Railroad Corporation shall take over the property of the existing State railroad corporations, subject to the entire outstanding indebtedness, and that the new Federal Railroad Corporation shall issue its capital stock to an amount equal to the entire outstanding capital stock of the State railroad corporation. Whatever water exists in the railroad stock now outstanding is to be perpetuated, through the act of the Federal Government, in the new capital stock which is to be issued by the new Federal corporations.

As hereinbefore pointed out, the Newlands plan provided that the property of the existing State railroad corporations should be transferred to the new Federal railroad corporations on the basis of the issue of the new Federal corporations of securities not in excess of the fair value of the property which is to be transferred. This would seem to be not merely a fair proposition, but also a very necessary step in order to establish sound railroad financial structures in lieu of many which are now unsound. However, when Mr. Alfred P. Thom, who appears in behalf of the railroads before the Newlands joint committee, was asked by Senator Cummins whether the railroads would be willing to limit the issue of securities by the new Federal corporations to the fair value of the property, Mr. Thom flatly refused to entertain such a

proposition, stating that the issue of securities equivalent only to the fair value of the railroad properties "would result in the financial ruin of the world." (Transcript, p. 399.)

Mr. Thom suggested, in reply to the argument that it would be most inadvisable to have the Federal Government compel the issue by the new Federal corporations of large amounts of stock in excess of the fair value of the property, that the new stock might be issued without par value and that in this way the difficulty might be overcome. However, as Senator Cummins pointed out, such a solution of the problem would "simply delude the country." One of the chief causes of the financial difficulties in which many of the railroads now find themselves is that their outstanding securities are largely in excess of the fair value of their property. Additional funds for capital expenditures can not be secured by these railroads from the sale of bonds for the reason that the amount of bonds already outstanding is equivalent to or greater than the fair value of the property, nor can such funds be secured from the sale of capital stock for the reason that there is little or no equity at present behind the existing capital stock and no possibility, under just and reasonable rates, of earning substantial dividends to be paid on new capital stock in addition to capital stock which was issued by the railroads for little or no consideration. The issue of capital stock without par value in lieu of the capital stock now outstanding would not add a single dollar to the value of the property or increase by a single dollar the amount of net earnings available for dividends on capital stock, or in any way improve the present financial structure of the railroads. Unless the investors of our country are "deluded," as suggested by Senator Cummins, they will be very slow, as long as the financial structures of these railroads remain as they are, to purchase additional securities, either bonds or capital stock. These comments, of course, do not apply to railroads whose financial structures are sound.

Furthermore, the plan suggested by the railroads may involve most serious consequences with reference both to future railroad rates and to the price which the Federal Government will ultimately pay for the property of the railroads. As already pointed out, the new capital stock is to be issued, in effect, under compulsion of the Federal Government. Will not the railroads therefore urge, under these circumstances, that the Government is estopped from claiming that the property of the railroads is worth less than the amount of the securities the issue of which was thus compelled? Is this not one of the real reasons for the plan of Federal incorporation proposed by the railroads? Is it not their desire to lay the foundation for hereafter urging increases in rates on the basis of the securities to be issued under compulsion of the Federal Government? And, furthermore, are they not attempting to lay the foundation for hereafter claiming a high value, based on the issue of such securities, when the people of the United States finally purchase this property? In either event, this aspect of the railroad plan is worthy of the most careful consideration from the American people.

In my opinion, entirely apart from other features of the plan, the railroad proposal should never be adopted except on the basis of the limitation of the issue of the new securities to the fair value of the property and on the basis of a proper relationship between the various classes of securities.

#### FEDERAL INCORPORATION UNNECESSARY.

The representatives of the railroads before the Newlands committee repeatedly admitted that they can accomplish by direct legislation, such as by the amendment of the interstate commerce act, everything which they hope to accomplish by the indirect instrumentality of Federal incorporation. This admission is subject to the qualification that it may be possible, under a Federal incorporation act passed in the exercise of the military power and the power to establish post roads, to take from the States powers which could not be taken from them under the commerce clause of the Federal Constitution as it now reads.

Referring specifically to the control of the issue of railroad securities, Mr. Thom has repeatedly admitted that exclusive Federal control of such issues can just as effectively be established, as a matter of law, by the passage of the Rayburn bill or some other amendment to the interstate commerce act as by providing a plan of Federal incorporation of the railroads.

Then why do the railroads advocate the enactment of the indirect means of Federal incorporation when they can just as readily accomplish their purpose

by dealing directly and openly by amending the interstate commerce act? Is it because they think that they can more readily accomplish their purpose by indirect means which are not clearly seen and understood than by direct action in the open? The only answer given by the railroads is that before bankers would purchase railroad securities issued under Federal control thereof established by amendment to the interstate commerce act they would insist on having the legality of such amendment established by a decision of the Supreme Court of the United States. The railroads contend, on the other hand, that if Federal incorporation were effected, these same bankers would purchase railroad securities thereafter issued without questioning the legality of the machinery provided by the Federal Government.

These arguments of the railroads are, in my opinion, by no means persuasive. It would be a comparatively simple matter to take to the Supreme Court of the United States a test case raising the question as to whether the Federal Congress may, by direct amendment of the interstate commerce act, provide for exclusive or any other regulation of the issue of railroad securities. Statutes involving important changes in matters affecting property interests as well as human rights are constantly passed by the Federal Congress, and in due course the Supreme Court of the United States passes thereon, adjudicating all questions of doubt. The most signal weakness in this position of the railroads is their assumption that no litigation would follow the adoption by the Federal Government of the railroad plan of compulsory incorporation of all the railroads. If this plan is adopted, I predict that there will follow thereon the greatest flood of railroad litigation which the United States has ever known.

The only reason urged by the railroads in favor of accomplishing their purpose indirectly instead of directly is the desire of these bankers to have the indirect method adopted rather than the direct method. This reason, in my opinion, is entirely unsatisfactory from the public point of view.

#### GENERAL CONCLUSIONS.

Finally, I desire to suggest a few general conclusions on the subject of Federal incorporation of the railroads.

1. It can not be said, as a general proposition, that Federal incorporation of the railroads is necessarily inherently good or bad. For instance, a plan of Federal incorporation of the railroads under which the amount of outstanding securities would be reduced to a reasonable amount, the financial structures of the railroads improved, and their ability to secure the necessary additional funds enhanced, without at the same time taking away from the States their powers over essentially local matters, would be regarded as a good plan by many public-spirited citizens who regard the present railroad plan as essentially bad. Hence it is necessary in passing judgment on a plan of Federal incorporation of the railroads to consider the details of the particular plan presented and then to determine whether that plan, with its details, is or is not desirable.

2. The plan of Federal incorporation now presented by the railroads is, in my opinion, distinctly against the public interest. It is calculated to break down the entire machinery of public regulation without in any degree improving the unsound financial structures from which many of the railroads are suffering. Furthermore, it has inherent in it grave dangers to future rates and to the future price to be paid by the Federal Government for the properties of the railroads, as heretofore pointed out.

3. The entire purpose of the railroad plan would seem to be to escape regulation by the States and to perpetuate the existing railroad securities. Unless these purposes are commendable, the plan certainly should not be adopted.

4. When the framework of a Federal incorporation act has once been provided, even though necessary qualifications and limitations are at first contained therein, it will be a simple matter for a subsequent Congress to strike out the qualifications and limitations so that the railroad purpose will be completely accomplished.

5. No convincing reason has been shown why such legislation as may now be desirable should not be enacted directly by amendment of the interstate commerce act or other direct legislation instead of by the indirect, devious method proposed by the railroads.

BOSTON, February 8, 1917.

Hon. W. C. ADAMSON,

*Chairman, Washington, D. C.*

DEAR SIR: There is an opportunity for the Government to improve the service offered by the railroads of this country and at the same time give a stability of value to railroad securities that I am confident the present administration would carry out if the importance of the advantages to be gained could be clearly shown. To accomplish this I take the liberty of addressing you on this subject.

Whether or not the Adamson bill proves to be unconstitutional it is bound to prove a burden for all railroads of this country. There is bound to be an increase of salaries and railroad employees, no matter which way the question is decided. Certain of our railroads, such as the New York Central and Pennsylvania, have been making large profits handling export business brought about by the war. Railroads like those mentioned can afford for the time being to meet the additional demand, but such is not the case with the average roads. What I am anxious to have the Government do in connection with the freight cars is that they should take the position practically the same as the Pullman Co. now occupies in the sleeping-car business; that is, the Government will control all the freight cars of this country. The amount of money saved to the railroad, if such an arrangement were made effective, would run into hundreds of millions, and the advantages offered to the public and shipper would be enormous.

Roughly speaking, there are about 2,500,000 freight cars, worth about \$3,000,000,000. These cars, according to a statement recently made by President L. F. Loree, of the Delaware & Hudson, are employed for transportation only a little over 2 hours out of every 24. If the management of these cars were in Government hands, say under the control of the Interstate Commerce Commission, with bureaus located in our principal cities, the efficiency of the cars would be doubled. It is plainly evident that if the Boston & Maine at Bangor, Me., has a Pennsylvania car on its track, and at the same time there is a Boston & Maine car on the Pennsylvania system, there could be an immediate offset if the plan proposed were in force, instead of empty cars being returned, as is the present way of handling business. As a result of present conditions 43 per cent of the freight cars of this country are handled as empty mileage. Furthermore, the Government control would mean the standardization of freight cars. At the present time there are 18,500 different parts in a freight car, and if they were of one standard make the delay caused by repairs, now a very serious item, would be cut in half. Furthermore, the average freight car has a capacity of 40 tons, but the average loading of same is only about 12 tons. If these cars were held under one ownership this loading could be largely increased. Cars could be readily moved to a point where the density of profit would require them at different times of the year, just as the Pullman cars are shifted south in the winter and back north for the summer months.

If this plan were put into effect it would increase the earning power of the freight cars 33½ per cent, which would equal the addition of 800,000 freight cars to the transportation service in the United States.

What I propose is that a corporation be formed and placed under the control of the Interstate Commerce Commission, this corporation to control all the freight equipment in the United States, charge a revenue for every car, and pay rental to the different roads for the use of the car. This concern, being under the jurisdiction of the United States Government, could borrow money for new car equipment at much lower rates than it is possible for even the New York Central and Pennsylvania to do at the present time.

This will naturally raise the question, Why is it that the railroads do not do this themselves if it has so many advantages? The answer is that the rivalry among railroads is so great that the desire on the part of the strong roads to maintain the advantage over the smaller roads, by having a larger supply of cars to offer the shippers, is so strong that they are not favorable to any changes, although the advantages to them would be enormous.

Very truly, yours,

F. H. PRINCE.

The CHAIRMAN. A friend of mine has compiled the following statement, which I desire to insert in the record:

The traffic of the Pere Marquette Railroad during the past three years has necessitated the average employment of 21,000 freight cars daily (see Exhibit 1) on its lines. This means a daily charge of 45 cents per car (see Exhibit 11) or \$10,500 per day or \$3,832,000 per year, and one-third of this equipment is required to carry on the L. C. L. business, averaging but 5 tons to the car.

It is conservatively estimated that this traffic is actually carried at a loss of over \$10 per car (see Exhibit 3). Taking the number of cars of this class of traffic handled in 1913 it will show an actual loss to the road of about \$1,740,000.

An increase in rates will not affect materially the earnings on this class of freight, as it is plainly evident it is impossible to carry without loss 5 tons of freight in a 40-ton car without being compensated for the cost of the car as it is to carry five passengers in a coach and ask for a revenue that will compensate for the service rendered.

This less-than-carload merchandise business must be carried, the shippers' demands make it impossible to load more than 5 tons to the car, and this service is the expensive traffic of the road. It means a loading cost of 40 cents per ton for manual labor; the furnishing of expensive terminals requiring continual improvements and expansion; it means an unloading cost of 40 cents per ton; a switching charge of \$3 per day; and the continual delay to freight trains for unloading and setting off cars.

The slow movement of freight on the Pere Marquette is largely due to the merchandise freight handled. This general merchandise traffic averages about 7 miles per hour on account of unloading delays.

This L. C. L. merchandise of 5 tons loaded into one car is often divided up among as many as 250 shippers, and averages between 60 and 70 to the car, so that this additional tariff will average from 7 cents to 10 cents per consignee, and in many instances as low as 2 cents to 4 cents.

It is clearly evident it is neither right nor just that the owners of the property or the shippers of carload freight should be obliged to bear the burden that is forced upon them through the carrying of this class of traffic at this enormous loss. With the revenue asked for there would still be a loss incurred amounting to over \$4 per car on each car of L. C. L. business handled. A similar situation would arise if the road gave free passes to one-third of its passengers and expected the property and the remaining two-thirds of the passengers to bear the total cost of operation.

#### EXHIBIT 1.

*Number of freight cars on Pere Marquette line as reported to American Railway Association.*

1913:	Number.	1914:	Number.
July 22-----	23, 198	January 7-----	23, 543
August 22-----	23, 889	January 22-----	24, 326
September 10-----	26, 039	February 7-----	24, 828
September 22-----	25, 818	February 21-----	24, 268
October 8-----	26, 455	March 9-----	23, 699
October 22-----	25, 481		
December 8-----	23, 497		
December 22-----	22, 910		

Daily average, 24,457.

I have called the average number of cars on the line 21,000 per day, allowing 3,457 to be considered bad-order cars, which is 2,000 more than should be on the road under ordinary conditions.

No report has been made to the American Railway Association since March 9, 1914.

OCTOBER 22, 1914.

*Basis for cost of cars owned by the Pere Marquette Co. on line per day.*

On a new freight car costing \$1,000, the expense borne by the company would be as follows:

Cost for—	Per annum.	Per day.
Interest at 5½ per cent.....	\$55.00	\$0.151
Depreciation at 6 per cent.....	60.00	.164
Repairs.....	75.00	.206
Insurance.....	2.52	.007
Taxes.....	9.00	.025
	201.52	.552

OCTOBER 23, 1914.

EXHIBIT 3.

*Basis for \$10 loss—Pere Marquette.*

Loading cost, 35 cents per ton, average of 5 tons per car.....	\$1. 75
Average cost to unload general merchandise in passing train is 75 cents per ton, or per car.....	3. 75
(It costs about \$4 per hour to delay a local merchandise freight train because of the higher rate of wages paid to this crew than to other freight train crews, as well as additional man to train.)	
Cost of switching.....	3. 00
Average per dlem of 5 days, at 45 cents.....	2. 25
Average cost.....	10. 75
Average earnings on merchandise freight, per car.....	15. 00
Balance to pay for average haul of 156 miles.....	4. 25
It costs over \$16 to haul a car of freight 156 miles.....	16. 00
Leaving a loss per car to road of.....	11. 75

Without taking into consideration interest and taxes on freight houses or the maintenance of same, and not considering cost of claims, which averages about 64 cents per car.

OCTOBER 23, 1914.

PERE MARQUETTE RAILROAD CO.,  
Detroit, Mich., January 15, 1917.

Mr. W. J. MULLIN.

*General Traffic Manager, D. & H. Co., Albany, N. Y.*

DEAR SIR: Yours of January 9, your file 5505, cost of handling L. C. L. traffic.

It seems extremely difficult to draw comparisons between any two railroads respecting their merchandise traffic, because of the difference in conditions and character of traffic and the difference in the statistical data from which the deductions are drawn.

On the Pere Marquette we keep all less-than-carload traffic under the head of merchandise. We also keep in the office of our superintendent of transportation a record of all revenue cars loaded on the line and received from connections, showing the various principal commodities and merchandise cars separately.

Taking the fiscal year ending June 30, 1916, we show—

	Loaded on line.	Received from con- nections.	Total.
Revenue loads.....	404,471	236,152	640,623
Merchandise cars.....	149,280	23,456	172,736

Tons of merchandise.....	988,387
Per cent of total tons.....	7.66
Tons 1 mile (merchandise).....	145,515,452
Per cent of total tons 1 mile.....	6.23
Revenue on merchandise.....	\$2,711,887.15
Per cent of total revenue.....	17.96
Average haul (miles).....	147.23
Rate per ton per mile (cents).....	1.86
Rate per ton per mile all freight (cents).....	.64
Average car earnings:	
All revenue loads (640,623 cars).....	per car.....\$23.56
Carloads (467,887 cars).....	do.....\$26.47
Merchandise (172,736 cars).....	do.....\$13.70

Merchandise earned 18.7 cents per 100 pounds.

Merchandise averaged to load 5.7 tons per car.

Twenty principal stations loaded in one year 118,751 cars of merchandise with average loading of 6.3 tons.

Chicago loaded 7,012 cars, with average load of 7.93 tons.

Detroit loaded 14,080 cars, with average load of 7.48 tons.

Taking the 118,751 loaded at the principal stations and the 23,456 cars received from connections, we have 142,207 cars accounted for out of a total of 172,736. This leaves only 30,529 loads to have originated at all other stations. There is probably a slight duplication of cars where through loads from connections pass through a junction like Detroit and are partly unloaded, but these are not numerous.

What seems to me a rather strange fact is that of all the merchandise we handle I do not recall one regular car that passes over our road without being worked somewhere.

You have many such cars coming on at Mechanicsville and off at Binghamton, and probably separate your carloads of through merchandise from the other merchandise traffic. We get a lot of long-haul merchandise from Niagara Frontier to Ludington, Grand Rapids, etc., which is good paying traffic, and our Chicago to Michigan merchandise pays well (176 cars in first nine days of November averaged to pay us \$35.71 per car) but our trouble lies largely in the fact that our jobbing towns are so near together in Michigan that the average haul is low. We have wholesale distributing houses at Detroit, Toledo, Chicago, Lansing, Grand Rapids, Benton Harbor, Muskegon, Port Huron, Bad Axe, Saginaw, Bay City, Manistee, Traverse City, and Petoskey. I once checked up the L. C. L. business from these points for three given days, separating the tonnage into 25, 50, 75, 100, 125 etc., mile zones, and in some cases as much as 80 per cent moved less than 100 miles.

We have tried holding over cars for straight station loads and then have through trains set them out. This caused no great inconvenience to patrons but did bother about setting of cars at crowded freight houses and, in a way, worked a hardship in the freight house. There is also the feature of moving empties into the country stations for produce out. For about eight months in normal years we need cars at interior points and, except on paper, it does not cost any more to move two light loads than one heavy and an empty car. This like the "tariff," is a local issue.

I have for a long time felt that we could not get much united action on this until all roads kept their accounts so as to know how much less-carload traffic they handled. Until they do that they will simply be groping in the dark.

Unless these items are separated in our accounts, we will be in as bad shape as a country merchant who does not know which commodities are paying profits or which departments in his store are losing money, and a study of cost of handling less-carload traffic will be a waste of time if we do not know the specific gross income derived from it.

We show that it costs 98 cents a ton to handle freight at our Detroit station. It costs us \$1 a ton at one Chicago station, and about this at our main Chicago

station where we do the work and pay the rent, etc. Assuming that the expense at interior points averages one-half of this, it means about  $7\frac{1}{2}$  cents a hundred out of our 13.7 cents for terminals alone, and I venture the opinion that where some shipments are rehandled several times we get nothing out of it after paying for labor.

I shall be glad to hear from you if you can get any additional ideas or suggestions on this subject.

Yours, truly,

GEORGE C. CONN.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY SYSTEM,  
FREIGHT TRAFFIC DEPARTMENT,  
Chicago, Ill., January 2, 1917.

COST OF HANDLING LESS-CARLOAD FREIGHT.

MR. GEO. C. CONN,

*F. T. M., Pere Marquette R. R. Co., Detroit, Mich.*

DEAR SIR: Referring to your letter of December 16, file 3340, inclosing copy of Mr. Glenn Warner's report relative to the transportation of less-carload freight, I invite your attention to comments of Mr. G. W. Oliver, our statistician, in his letter of December 28, copy attached. I will be glad if you will ask Mr. Warner to send Mr. Oliver under personal cover a copy of his study.

We have not made an exhaustive investigation of less-carload traffic on the Santa Fe, but since the decision of the Interstate Commerce Commission in the Missouri River-Nebraska rate cases we are giving the subject of terminal cost more thought, particularly in connection with State rate cases. I may say that it is the consensus of opinion among our people that we do not earn much, if anything, above cost of handling short-haul less-carload shipments, particularly where the rates are divided with one or more connecting carriers. I think the situation is more pronounced east of the Mississippi River than west thereof; note our average haul Kansas City, Mo., to Kansas points (practically intrastate) is 178 miles, average revenue per ton \$8.73 as compared with your total average haul of 157 miles and revenue of \$2.64 per ton. The measure of rates, carload as well as less-carload, west of the Missouri River is, of course, necessarily higher than east thereof, as illustrated by these figures, but that does not indicate that the rates in Michigan are compensatory. Our average haul all L. C. L. traffic is 331 miles, approximately two and one-quarter times that of the Pere Marquette, but our revenue per ton is more than three and one-half times as great (\$9.68 and \$2.64 per ton, respectively). Revenue from less-carload freight Santa Fe System lines fiscal year ending June 30, 1916, was 18.41 per cent of total freight revenue. It constitutes a much larger proportion on most of the eastern roads. Much of it, in my opinion, is a burden on other traffic, owing principally to terminal costs which are increasing and in most of our large cities increasing all out of proportion to increase in revenue from less-carload traffic. As property values rise in Dallas, Tex., for example, necessary enlargement of in and out freight house facilities cost much more than heretofore. I am firmly of the opinion that less-carload rates for short hauls might be substantially increased even to the extent of 25 per cent without being detrimental to any one.

If the Nebraska case referred to has not come to your attention, believe you will find the expression of the Interstate Commerce Commission on this particular point very interesting.

I thank you for a copy of Mr. Warner's study and will be glad to furnish you with any data which we may hereafter compile in relation to this interesting subject.

Yours, truly,

F. B. HOUGHTON.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY SYSTEM,  
Chicago, December 28, 1916.

MR. F. B. HOUGHTON,

*Freight Traffic Manager, Chicago, Ill.*

DEAR SIR: Replying to your letter of December 22, file S-644670, and returning inclosures in regard to the analysis made of less-than-carload freight traffic on the Pere Marquette. The conclusions arrived at by Mr. Warner in this report appear to be conservative and I believe that they could be substantiated without

difficulty. While the report only covers one train for one day, the revenue per ton per mile secured on the business handled by this train was so much greater than the average revenue secured by the Pere Marquette that the test would seem to be conclusive. I am not in accord, however, with all the methods used by Mr. Warner in his analysis and were we making an analysis of L. C. L. costs for this company we would proceed under an entirely different formula, which, however, would probably not yield a result far different from that arrived at by Mr. Warner.

We have made no analyses of the cost of handling L. C. L. freight on the lines of this company, but from partial data which have been compiled in the past, we are satisfied that the terminal costs for handling L. C. L. freight at stations would range from \$2 to \$3 per ton, without any allowance for taxes or return upon investment. In order to allow for these last two items, this cost should be increased by 50 per cent, making the full cost \$3 to \$4.50 per ton, exclusive of the haulage service, or, in other words, the expense attachable to transporting the freight between stations. This indicates that our very short-haul rates, say under 100 miles as a group, are unremunerative.

The revenues for the less-than-carload service on the Pere Marquette appear to be very low, indicating that not only are their local Michigan rates confiscatory, but that they must receive inadequate divisions on joint traffic, or at any rate participate in joint traffic on which the rates are inadequate. Below is shown the average haul, the average revenue per ton per mile, and the average revenue per ton for L. C. L. freight on the Pere Marquette train No. 72, featured in Mr. Warner's report, and on L. C. L. traffic handled on their entire line in 1914 compared with L. C. L. traffic handled on certain sections of the Santa Fe.

	Average haul.	Revenue per ton-mile.	Revenue per ton.
	<i>Miles.</i>	<i>Cents.</i>	
Pere Marquette L. C. L. traffic:			
Train No. 72.....	29	12.14	\$3.49
All L. C. L. traffic (1914).....	157	1.67	2.64
Santa Fe L. C. L. traffic (1915):			
All L. C. L. traffic on system.....	331	2.92	9.68
Missouri intrastate.....	38	8.56	3.25
Kansas intrastate.....	74	5.75	4.25
Oklahoma intrastate.....	39	8.11	3.29
California intrastate.....	106	4.60	4.86
Texas intrastate.....	101	5.14	5.19
To Kansas points from Kansas City.....	178	4.90	8.73

It is apparent from the above that the Pere Marquette must be losing money from its L. C. L. traffic, but the same statement does not necessarily apply to the total L. C. L. business of this company, as it will be observed that with a haul more than twice as great as on the Pere Marquette (331 as compared with 157), we received a revenue per ton-mile almost twice as great (2.92 as compared with 1.67). If a full analysis was made of our L. C. L. traffic and it was disclosed that this business as a whole was not contributing a fair proportion of the revenue, such condition would undoubtedly be due to the fact that the short-haul rates are inadequate, the results under some of which in certain States are given above. It is difficult to believe that L. C. L. business which yields but \$3.25 per ton for a haul of 38 miles in Missouri, or \$4.25 for 74 miles in Kansas, or \$3.20 for 39 miles in Oklahoma, or \$4.86 for 106 miles in California, or \$5.19 for 101 miles in Texas, all of which involved two terminal services for each shipment and transportation between stations on high-cost local trains, would yield a fair return on the property used in the business.

In this connection it is desired to call attention to the opinion of the Interstate Commerce Commission in the Missouri River-Nebraska cases (40-ICC-201) where, after consideration of direct station terminal costs, the commission fixed class rates for the initial distances very materially higher than has been fixed by the commission in any previous case. Similar action was also taken by the commission in its last opinion in the Shreveport case (41-ICC-83) after consideration of a certain evidence relating to station terminal cost.

Mr. Warner's report is most interesting, and I would be very much obliged if you could secure a copy of same for my personal information.

Yours, truly,

G. W. OLIVER, *Statistician.*

## INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT CONTROL AND REGULATION.

MONDAY, MAY 7, 1917.

UNITED STATES SENATE,  
JOINT COMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The joint committee met at 10 o'clock a. m., Hon. William C. Adamson (vice chairman) presiding.

The VICE CHAIRMAN. The committee will come to order. Mr. Thom, will you present the witness?

Mr. THOM. Mr. Chairman, I have asked Mr. Trumbull, who is chairman of our committee, to present the witness.

The VICE CHAIRMAN. The committee was called in extraordinary session this morning at the suggestion of some gentlemen who suggested that there was an English witness who desired to leave the country in a short while, and we might lose the benefit of his testimony unless he was heard at this time.

Mr. TRUMBULL. I thank you very much, Mr. Chairman. We appreciate the special session that you are having, and it is a great pleasure to me to introduce Mr. W. M. Acworth, of London, who is a distinguished writer on railway economics. He commenced coming to America in 1890, and has been here a dozen times, and I think there is no man in our acquaintance who is better informed about governmental relations with railways of the different countries of the world than he.

He has served on different commissions in England; he was on the Royal Commission on Railway Accidents, the Royal Commission on Irish Railways; he served on the Departmental Committee on Light Railways, the Departmental Committee on Railway Accounts; he was a delegate of the British Government to the International Railway Congress at Washington in 1905, a delegate of the British Government to the International Railway Congress at Berne in 1910, and but for a little unpleasantness with Germany might have been a delegate to the International Congress in Prussia in 1915. He gave evidence here before the Elkins committee in 1905, and he was before the Hadley Commission on Issuance of Railway Securities in 1909. He has recently been in this country and in Canada because of his having been appointed on the Royal Commission of Canada to make a report upon the railway situation of that country. The commission to report on the Canadian railways consists of three members, Mr. A. H. Smith, president of the New York Central (chairman); Mr. Acworth, of London; and Sir Henry Drayton, chairman of the Canadian Railway Commission.

I have here an extract from "Certified copy of a report of the Committee of the Privy Council, approved by the deputy of his royal highness the Governor General on the 13th of July, 1916." This was in Canada [reading]:

The Committee of the Privy Council have had before them a report, dated 12th June, 1916, from the right honorable the prime minister, submitting that it became necessary at the recent session of Parliament to make provision for assistance by loan to the Grand Trunk Pacific Railway Co. and to the Canadian Northern Railway Co. in order that such companies might be enabled to meet current obligations and to provide for payment of interest on outstanding securities.

Having regard to the conditions and necessities of railway development in Canada, the prime minister is of opinion that the situation should be considered in a comprehensive way and that a thorough inquiry should be made by a board of the highest ability and experience.

As I said before, we are very much obliged to you for having this special session to hear Mr. Acworth, which is now or not at all, probably, because he leaves in a few days for his home in London, and expects to go after that to Rhodesia, in South Africa, to make a report on the railways there.

Mr. SIMS. Mr. Acworth can remain with us for examination and cross-examination until this examination is fully completed, I suppose?

Mr. TRUMBULL. Yes, sir; he will be at the disposition of your committee and subject to your pleasure. We understand that Congress begins its session at 12 o'clock to-day.

The VICE CHAIRMAN. The House meets at 11 o'clock, and it will be well to have Mr. Acworth begin his remarks as soon as possible.

Mr. TRUMBULL. And then we will determine later what further information you want.

Mr. SIMS. Of course, a witness of this importance ought not to be just skimmed over.

The VICE CHAIRMAN. Our further meetings will be subject to the action of the committee. You would not like to have a night meeting, would you?

Mr. TRUMBULL. Yes, sir; we would like that very much, if that would not be oppressive to you.

The VICE CHAIRMAN. We will let these gentlemen determine among themselves whether we will meet to-night or not.

(The committee, by subsequent action, determined to meet after recess to-day at 8 o'clock to-night.)

#### STATEMENT OF W. M. ACWORTH, ESQ., LONDON, ENGLAND.

Mr. ACWORTH. Mr. Chairman, may I say in the first place how much I appreciate the courtesy of the committee in this time of great stress in finding any time to listen to my testimony? I heard what the gentlemen of the committee said to Mr. Trumbull, and I will, of course, put myself absolutely at your disposition in the matter.

I have here—and I think Mr. Thom handed it around to the committee—a paper which, as the committee will see, is sixty-odd pages long, and I do not propose to inflict on the committee the reading of it, but rather to skeltonize it as I go along, and if any member of the committee wishes to ask me a question or have me go more fully

into it, of course I will be glad to do it, quite apart from any question which may be asked afterwards.

The VICE CHAIRMAN. Suppose you hand it to the reporter, and it will be printed in full in the record.

Mr. ACWORTH. I shall be very glad to do what the committee wishes in that respect.

(The paper referred to appears at the conclusion of Mr. Acworth's statement.)

Senator CUMMINS. Is Mr. Acworth familiar with the scope of the resolution under which we are now acting?

Mr. ACWORTH. Yes, sir.

Senator CUMMINS. And you propose to devote yourself to one or the other phases of that resolution?

Mr. ACWORTH. I naturally do not propose to tell the citizens of the United States how they should manage their own affairs. That is clearly not my business. All I propose to do is to put before you a sketch of the history, as I see it, of State ownership going backward and forward, the subject of State ownership in other countries. May I say, Mr. Chairman, that I have been studying this subject for 30 years, and if my mind has naturally got a bias the committee must allow for that. I have done my best to make this, as far as I know, an impartial statement of the case. Perhaps I may say, without giving the gentlemen's names, because I do not wish to put any responsibility on anybody but myself, I did have the paper gone over by two gentlemen of distinguished position on this subject, one in England and one in America, to see if they could catch me in any errors. One of them made no criticisms and the other said that he thought I had understated the case with reference to Switzerland and pointed out some figures which I subsequently embodied.

Mr. SIMS. Is there any objection to the witness giving the names of those gentlemen?

Mr. ACWORTH. I will give them, certainly, if you wish it.

The VICE CHAIRMAN. The witness, as a witness, is supposed to be talking for himself.

Mr. ACWORTH. My point is that I do not want to put the responsibility onto anybody else for my work, but I have not the slightest objection myself.

Mr. SIMS. You have no objection to giving the names of those who concurred with you in the matter?

Mr. ACWORTH. I would not say concurred with me; it was to this extent, as far as they saw the evidence was accurate.

Mr. HAMILTON. As far as I am concerned, I do not see that there is any special importance attaching to that. Mr. Acworth is stating what conclusions they reached, connected with his own testimony.

Mr. ACWORTH. I would not want to say conclusions. They might not make these conclusions, while they may accept the facts as accurately stated.

The VICE CHAIRMAN. It may become necessary for the committee to know their names, but I do not think it is important now.

Mr. SIMS. If there is no objection, I do not see why he should not give the names.

Senator ROBINSON. I desire to suggest that Mr. Acworth be permitted to make his statement and that we reserve that question until he has concluded such statement as he desires to make.

The VICE CHAIRMAN. The point of order is sustained. That is the order of the committee.

Mr. SIMS. The gentleman mentioned the fact that one of the parties was English and one American and that they have gone over this paper, and I see no objection to his giving their names.

The VICE CHAIRMAN. He only did that for the purpose of inviting criticism. They did not contribute to it at all.

Mr. SIMS. I suppose it is not confidential; if it was, he would not have mentioned the fact.

The VICE CHAIRMAN. He is entitled to the credit.

Mr. ACWORTH. And the discredit, sir.

Mr. Trumbull has mentioned the fact that only in the last two or three days this, which is our official report to the Government of Canada, has been published, and clearly I was not in a position to discuss Canada anywhere else. Consequently, you will not find Canada mentioned in this paper, except, I think, there is one mention in a footnote, but I have not gone into any history in Canada for that reason. My mouth is now open, if any member of the committee wishes to ask me a question. If so, I am perfectly willing to answer.

Now, may I turn to the paper itself? I began by pointing out that railway enterprise began simultaneously in England and in America. The natural instinct of the Anglo-Saxon people was to leave things to be done by private enterprise, if they could be done by private enterprise, and accordingly the railways began as a private enterprise.

I think at the outset there is this point: The railways were a new kind of thing because they combined two things; they combined the building and maintaining of a railroad, which had always, in every country, been regarded as a State function, with the operation of traffic on that road. In no country that I know of had it ever been the custom for the Government to carry traffic on the road. The public authority owned the road, the private people carried the traffic, whether freight or passengers. In railway matters you could not have independent carriers running around on the railways for obvious practical reasons.

Therefore, this point was put up at the beginning, "Shall the idea of the State owning the railroad or the idea of the private person operating the railroad prevail?" Well, it is quite clear all through railway history that the question of whether the State shall operate the railways or not has never been decided on the abstract question. It has always been a question put to the individual government. Under the circumstances as they exist to-day, what are we to do about it? This report of ours in Canada came up not on the question abstractly, should the State or private persons run the railroads, but the railroads having got into such and such position, and it being perfectly obvious that things could not go on as they are now, what is the way out of it? I think that has always been the way the question has come up to the people who have practically to settle the policy, and at the very beginning of railway history that question came up in Belgium. The committee will remember that Belgium

was separated from Holland in 1830, which was exactly the date that railway enterprise began.

I believe your first train on the Baltimore & Ohio ran in 1830. Certainly our first well-known railway, the Liverpool & Manchester, opened in that same year. Belgium broke loose from Holland, and the route which crossed Belgium from Cologne to Ostend and Antwerp was a very important highway of traffic. It became obvious that they had to have a railroad there. It was also obvious that if private enterprise was to build the railroad, if private capital was to find the money, there was not the available capital in Belgium; there was available capital in Holland, and the Holland capitalists would own the main thoroughfare through Belgium. The Belgian Government, newly independent, said that was impossible, and the Belgian Parliament agreed at the outset. In this earliest instance of State ownership it was decided that the Belgian Government itself should build and own and operate this highroad across Belgium. I think the lesson of that is that it is really always a question of practical politics at the moment, dealing with circumstances as they are at the moment, and not a theoretical question.

Then I go on to speak of the statistics—of what railroads are owned publicly and what railroads are owned privately. It is a common statement that most countries own their own railroads, and if you count countries by the heads, it is perfectly true. Bulgaria owns all its railroads, and so does the United States, and they are each one country, and the railroads of Bulgaria are about 1,200 miles long and are about as important as the Maine Central. If you were to set up the Maine Central as a balance to the rest of the railroads of the United States, it would be rather absurd. But it is by that process that the people arrive at that statement that most countries of the world own their own railroads. The fact is that almost exactly half the mileage of Europe is State owned. The figures are as follows: Two hundred and sixteen thousand is the total, of which 116,000 is owned by the different governments and the rest owned privately. If you take the whole world together it is 700,000 miles of railroad, and less than one-third are in the hands of the States. It really comes broadly to this, that leaving out the United States, which is a good deal more than one-third of the total mileage of the world—leaving out the United States the world goes half-and-half.

If you take it, not on mileage but on capital, on equipment, and on work done, it is broadly true to say that two-thirds of the mileage of the world has been built by private enterprise; two-thirds of the work is done by private enterprise: and two-thirds of the capital has been provided by private enterprise. But as I say, in Europe at least, most countries do own either the whole or some part of their railways.

Then I go on to speak of the changes in ownership. Nearly every country has swung backward and forward. As I said, Belgium began with State ownership. At one time it allowed the State railroads to remain unextended and the new mileage was all built by private enterprise. Then, after the war of 1870, when Prussian ideas began to spread over the continent, Belgium came to the conclusion that competition between private and State owned railways was not desirable, largely, I think, because the private railways, being more

agile, got the better of the State railways. Belgium went in for the policy of absolute State ownership. Austria, to take an instance, or Italy, have swung backward and forward. Sometimes they have sold railways to private companies, or leased them, and sometimes they have taken them back again, etc.

Prussia of course is the most interesting case. People often speak of German railways. In fact, except in Alsace-Lorraine, where the railways do belong to the German Empire, there are no German railways, properly so-called. There are Prussian railways and Bavarian railways and Saxon railways, etc., but they belong to the individual State and not to the Empire. When Bismarck was in the full swing of his power after 1870, he was very anxious to make all the railways German, largely—the Prussians always have a military reason—largely for military reasons and partly because he saw in this one important method of bringing together and unifying the Empire. But Germany was not prepared for it, and almost as soon as Bismarck proposed in the Parliament of the Empire to put together all the railways of the different States, Bavaria and Saxony, which were the two biggest States after Prussia, replied by purchasing themselves all the private railways in their own borders and then they could oppose the solid block of Bavarian railways and Saxony railways and say, "We won't hand our railways over to the Empire." So Bismarck had to give up that and had to content himself with nationalizing all the railways of Prussia.

Up to that time the exposition had been, broadly, that the railroads in the wealthy manufacturing parts had belonged to private companies which were ready at the start to find capital where there was a good chance of return; but the poorer agricultural districts had been left; private capitalists had not cared to touch them; and their railways had been built by the State. But Bismarck found this double system, and when he left he had bought out the private railways; and there was, as there is now, a complete block of State railways in Prussia with no private railways of any importance. There are one or two lines of small importance still left, and there are a large number of what they call light railways, merely agricultural feeders to the main line, that are built and operated by companies generally with the assistance of the provincial government, that are not in the State system; but, broadly speaking, the whole Prussian railways are absolutely one undivided State system with about 26,000 miles to-day.

Now, perhaps, I may deal with the question why governments go into the railroad business. I do not know whether any members of the committee know the book on railroad transportation by President Hadley of Yale, which came out about 30 years ago. That has always been a textbook for people who have studied this subject ever since. President Hadley wrote in 1886 as follows:

The motives which have led governments to extend the sphere of their business activity have been three:

1. To increase their own political influence.
2. To make up for the lack of private enterprise.
3. To avoid the abuses incident to private management.

Well, there has been a good deal of railway history made in the last 30 years, and I suggest that a fair historical account of the reasons may now be put something like this—I still agree that there

are three reasons. The first is the political reason. The political reason may be either external or internal. The external reasons are to obtain control of an instrument of war to be used either for aggression or for defense, or to prevent the control of this instrument by capitalists subjects of another possibly hostile power; or, again, to be able to use the railway tariffs as an auxiliary in support of the policy embodied in the customs tariffs of the country.

Those are all reasons external to the State. The main internal reasons are either to unify the nation—as I have just explained in Bismarck's case—or to centralize authority or to obtain new sources of revenue independent of the taxes voted by Parliament.

The second reason why governments go into the business is to make up for the lack of private enterprise.

The third reason is with the idea of procuring for their citizens better conditions (lower rates, greater facilities, more impartial treatment, etc.) than private enterprise has given or is expected to give or is accustomed to give in the future.

Well, of course, that, sir, is a long story. One might write that in several volumes. If I may, I shall just try to give the committee very shortly the story of how the different important nations approached the problem, what was their reason, and what was their solution.

Prussia is, in this matter, the most important. It is the biggest railway administration in public hands in the world, and it is usually accepted as the most efficient. Now, I have given reasons later on in this paper for saying that there is a good deal of evidence that, compared with fairly comparable railroads elsewhere, the Prussian railroads are not very startling examples of efficiency. I think there is good evidence that private railroads in France, which can be compared, do their work better for the public.

Then I make another point, and I think that is a point that the whole history of countries with a democratic government proves to be of very great importance. Let us assume that the Prussian railways are entirely efficient. As I have said, I think there is evidence that they are not very efficient, but assume that they are entirely efficient. The Prussian railways are run by an absolute despotic authority. Parliament has no more control over the Prussian railways than it has over the Prussian Army. The railways are run by an officer who is responsible directly to the King, and, in fact, to nobody else.

Now, assuming the efficiency of the Prussian railways under that management, does it afford any reasonable evidence that the efficiency of State railways will be equally great when they are managed under a democratic system such as exists in, for example, the colonies of the British Empire—as they would be in England or in the United States, if one imagines the United States nationalizing its railways, or, which is the most startling instance, perhaps, of recent years, in France. The French have in the last eight years nationalize one of their important railroads, one out of the six great systems, and, according to their own confession, they have made a most appalling mess of it, and admittedly the reason has been that it is managed under a democratic organization that is not suited for the work.

Let me deal with the history of annexation in Prussia. I must not attempt to read it at any great length. It is clear that in Prussia there was a very strong case for nationalization. The circumstances were exceptional. Germany was a very loose-ended country. There was no central point of focus of the traffic of the whole country, like you have in Paris or in London or in similar places. The railways were short and were in the hands of small independent companies, quarreling and squabbling to a very considerable extent, and the result was—the description that they gave—I think I had better give the words of the Prussian State paper dealing with the question of State ownership. They described the abuses of private management in this way:

The existence of numerous concerns of doubtful solvency and restricted capacity of service, abuse by the concessionaries of their privileged position, opposition to desirable reforms, complicated and arbitrary variations of their methods of organization, chaos of tariffs, quarrels, and waste resulting from the fierce competition of numerous separate administrations.

Now, there is the case as made by the official Prussian representatives for nationalization, and I have applied to it experience to see how far those charges made—it does not matter now whether they were then true or not for Prussia—how far those charges are things that belong to private ownership as such.

Now, the first charge is that there were “numerous concerns of doubtful solvency and restricted capacity of service.” There never has been in France any concern—no railway has ever been in doubtful solvency and restricted capacity of service. I would not say there had never been anything of the kind in England, but practically there are no railroads to-day to which you could apply this, except railways of quite trifling importance.

The second charge is “abuse by the concessionaires of their privileged position.”

Well, I suppose that means that they tried to get the best net return out of their undertaking, and the curious answer to that is that there is no country in the world where tariffs have been maintained with the same rigidity as Prussia. Prussia, after paying the interest on its railroad debt, makes a profit of an average, I think, about \$50,000,000 or \$60,000,000 a year, which it pays over for the general purposes of the Government of the country; and the Prussian Government has held onto that revenue with the utmost tenacity, but they have obtained the revenue by maintaining the rates unreduced over a long period of years, during which practically every other country in the world has reduced its rates.

So that the charge that the concessionaires abused their privileged positions is, in other words, exactly the charge that one might make against the Prussian Government itself.

Mr. ESCH. You are referring now to freight rates?

Mr. ACWORTH. Yes, sir; it is certainly true that in Prussia passenger rates have been reduced somewhat, but not more, I think, than in all other countries—more than in France, but not, I should say, than the United States or the United Kingdom. They have reduced their passenger rates, but they have kept up their freight rates, which bring in that three-fourths of their total revenue.

The third charge is “opposition to desirable reforms.” Well, I have dealt with this point later on in this paper more in detail.

Practically every important improvement in railway service that anybody can think of has come from private railways and not from public railways.

I asked a friend to tell me of any remarkable improvement—anything in the nature of new methods or invention—the introduction of vacuum brakes, the introduction of dining cars and sleeping cars, the development of fast express trains, etc. I asked, “Can you suggest anything that has come from Germany?” After a good deal of time my friend said to me: “They are really responsible for the introduction of the superheater.”

The VICE CHAIRMAN. I did not quite understand your statement there as to where all these reforms came from; I did not hear you.

Mr. ACWORTH. I am sorry, sir. I say that practically all improvements have come from the United States or the United Kingdom; but without claiming them for ourselves, my point was that they have not come from State railways; they have not come from Prussia.

The CHAIRMAN. I heard all that belonged to that, but I did not quite understand your language.

Mr. ACWORTH. Then the fourth point: It was charged that private railways naturally had complicated and arbitrary variations in their methods of organization.

I think, as I have said, that there was a good deal of truth in that in Prussia. There is no necessary connection between that and private ownership. If you take France, if you take England, if you take the United States, the regulations for working of trains are uniform. Tariffs in France are as simple as in any other country. They are certainly very much more simple than tariffs in Germany. There is no more difficulty in sending a consignment of freight from one end of France to the other than in sending freight from one end of Germany to another. You know the condition of affairs in the United States. We had a startling instance in England in the beginning of the war—the day the war was declared—with the signing of an order by the Privy Council, all the railways were put together as a single unity, and there has not been a suggestion but what they have worked together in perfect harmony just as much as though they had been one unified State body.

The mobilization in France, with its separate railways, was carried out with exactly the same efficiency as in Germany; and there has never been any difficulty, that I know of, in any country, where railroads are well organized, in producing all the uniformity of organization, etc., that is necessary for the public service. The same thing is true in what the Germans call “chaos of tariffs.” There is no chaos of tariffs. The French tariffs are probably as simple as those of any country in the world. There are tariffs for traffic passing from one railroad to the other, without any difficulty.

Then, the last question is quarrels and waste resulting from the fierce competition of numerous separate administrations. That, of course, raises the very large question: Is competition desirable or not? The French have said, from the outset, “We think competition is undesirable,” and the French have districted their railways. As I dare say the committee know, the French system is that everything radiates from Paris, there are, so to speak, five spokes of a

wheel; each section of the wheel is assigned to one company, and within that territory there is no competition, and never has been.

We have in England eliminated competition in the last few years almost entirely. Of course, the United States has deliberately, through Congress, adopted a different policy. Congress has said that the railroads shall not combine; that competitive railroads shall not be put together. That has been the deliberate judgment of the American people as to the right thing to do; but if the American people think proper to change their attitude, and to say that "competition is wasteful; we will abolish it," there is no difficulty in doing in the United States what has been done in France, and dividing the country into systems, each occupying its own area, excluding competition within that area.

That was the case made in Germany. Now, sirs, I go on to give, very shortly, the story in Switzerland. I will make it as short as I can. Once more, it is not a question of abstract belief in which is the right or wrong policy. The Swiss Government found that, in fact, their railroads were very largely owned by German capitalists, and they disliked the idea of the Germans controlling the arteries of the traffic of the country; and they, accordingly, came to the conclusion that they would nationalize their railways.

Mr. SIMS. When did they nationalize?

Mr. ACWORTH. The three principal roads were transferred to the State in 1901, a fourth in 1903, and the last, the Gotthard Railway, in 1909; so that they have had something like 14 or 15 years' experience with State ownership.

As you know, sirs, in Switzerland, there is a referendum on every important measure. The first time it was proposed, the proposal was defeated by a two to one majority. It was taken up again after a few years, and the second time it was passed by a two to one majority.

I think this is one striking thing, and it is almost always found when the State takes over the railways. For the four years following 1903 the cost of staff increased year by year, as compared with the previous year, by the following percentages: 10.16, 7.08, 9.99, and 9.27. In the 11 years from 1900 to 1911, the number of staff increased 46 per cent; the wages increased 92 per cent. In 1912 there was a further increase of less than 1 per cent in the staff, and an increase of more than 10 per cent in wages; so that you have a 25 per cent increase in road mileage, an increase of 100 per cent in passenger traffic, and an increase of 67 per cent in freight traffic. That fairly justified the increase in the number of the staff, but the increase in wages, which was 100 per cent in the 11 years, was very large and it upset altogether all the calculations that the Government had put forward when they took over the railways.

The operating ratio in 1903 was 65.53 per cent, and five years later it had gone up to 71 or just over 71 per cent; and the result was that whereas they had calculated that they would meet all the expenses and have a considerable sum over for a sinking fund they found that, so far from having got any contributions toward the sinking fund, they were two and a half millions—not a large sum, but it is not a large railway—they were two and a half millions short of meeting the actual charges for operation and the interest on the debt.

Switzerland, I think it ought to be said, is really quite a successful instance of State management. They have not been extravagant; they have, broadly speaking, made both ends meet. When they found themselves going down hill in 1910 they took fright, and they said they could not afford to go on in the way they had been going. They reduced the service; they to some extent increased rates and fares, and they ceased to fill up vacancies of the staff when they retired, and in that way gradually reduced somewhat the deficit in their accounts. They have not produced any very satisfactory result from the public point of view. The passenger fare, in the course of the 11 years from 1900 to 1911, went down 13.5 per cent, but the freight rates were a little worse than they were at the beginning. They charge rates of which nobody here has any conception. The average rate is about 3 cents per ton per mile, which is four times the American rate; but it was a little below 3 cents in 1900 and in 1911 it was a little above 3 cents.

The financial result is this: The estimate put forward, and on which the people voted, was that within 60 years the profits would be sufficient to extinguish the debt. The debt, at the time of the acquisition, was \$205,000,000. After a quarter of the period had expired, so far from reducing the debt, it had risen to \$270,000,000.

Mr. ADAMSON. Since we met, I have learned that the Senate does not meet until 12 o'clock. While I have to go to the House, Senator Robinson has consented to occupy the chair, and we will go on a while longer—possibly an hour.

(Senator Robinson at this point took the chair.)

Senator ROBINSON. You may proceed, Mr. Acworth.

Mr. ACWORTH. Then, sir, I dealt with the case of Italy. Italy is so complicated a story that I hesitate to take the time of the committee in describing it, because the Italian history goes back to the time when Italy was composed of six or eight different States. There were the Austrians occupying the Provinces of Lombardy and Venetia; there was the King of Sardinia, who has now become the King of all Italy in the north; there was the Grand Duchy of Tuscany, with the Papal States in the middle; and the Kingdom of Naples in the south, not to mention several smaller ones; so that the story is very complicated, if you go back to the earlier history, and I think I must not trouble the committee with it.

However, in some places there was State ownership, and in some places there was private ownership, and it changed back and forth. I think I will take it up at this point: In 1881, when the States were all consolidated into the Kingdom of Italy, they appointed a commission, which sat for several years, and produced evidence in seven large quarto volumes, that went into the whole story, the whole history of railroads in the different countries of the world, and finally recommended that State ownership was not desirable, and that it was desirable to lease the railroads, most of which were in the Government's hands at the time, to private companies. And they accordingly constituted two companies—there was a third company for Sicily, but I need not trouble you about that—they constituted two companies, one of which was to operate on the west coast, and the other on the east coast. They met at Milan, in the center of the north, and they had arrangements by which they met again at

Florence, and again at Rome, and again at Naples; and, therefore, they counted on getting competition at all of the important points: and, under those conditions, the railroads were leased by the Government of these two companies for a period of 63 years with a break at the end of 21 years. Unfortunately, both the Government and the companies calculated on events that did not happen; they assumed that there would be a steady growth of traffic; that there would be a steady increase of net income, and that this would be available for improvements and betterments; but the traffic did not grow, and there were not much net profits, and the question was: Who was to do the renewals? I am, of course, cutting the story very short, but it was largely this question of who was to do the renewals and improvements that were necessary?

The railroads said, "We have got a 21-year lease; you can not expect us to find the cash, when we are liable to be expropriated at the end of the term." The Government said, "You have got a lease; you can not expect us to find the money"—especially, as the Government had great difficulty in finding money for any purpose—"You can not expect us to find money for the railroads which you are running and from which you will get the profits." And there were constant disputes between the Government and the railroads on this subject and others. The railroad employees were restive; they said they were overworked and badly paid; and, at comparatively short intervals, they either struck or threatened to strike; and they caused all kinds of difficulties. They were constantly putting pressure on Parliament to interfere in their behalf; and the result was that at the termination of the 21-year lease the Government had to consider what they would do; and they were considering it for some time, and, finally, almost at a day's notice, they resolved to take over the railroads. Yes, here is the date—they resolved on April 22, 1905, to take over the railroads as from the 1st of the following July; so that they took them over with two months, practically, to prepare for the great change. Undoubtedly, the Government has improved the railroads very considerably.

Mr. Sims. That was 1905, or 1906?

Mr. ACWORTH. 1905; the 1st of July, 1905, sir, was the official date at which they took them over. But the cost to the country has been very large. The number of men employed per kilometer of road increased from 9.3 to 10.9—that is, an increase of 23 per cent—but the wages increased 57 per cent. The total wages cost increased 57 per cent as the combined result of more men employed and a rate of wages very largely increased. They have got a very large increase of traffic, but in spite of it the cost of operation has increased very largely. The year they took over from the companies the operating ratio was 73.4 per cent. For the last three years for which figures are available—that is, 1911 to 1913—it had risen to an average of 84.4 per cent; that is, from 73.4 to 84.4 per cent. The operating costs have steadily gone up, and the result to the Treasury has been this: They have never gotten much out of their railways, but when the Government took it over the capital was, in round figures, \$1,000,000,000, on which the Government got a return of 1 per cent. The capital has now risen to \$1,375,000,000. The capital, you will observe, increased 37 per cent. The interest, at the early date, was

at the rate of 1 per cent; the interest in the later years has come down to two-fifths of 1 per cent, which is a very serious burden on the not overrich Italian treasury.

Mr. SIMS. You mean that the interest on the capital is only 1 per cent?

Mr. ACWORTH. The interest on the capital was 1 per cent.

Mr. THOM. The return, you mean?

Mr. ACWORTH. The return on the capital; yes.

Mr. SIMS. You said "interest." Therefore I was confused.

Mr. ACWORTH. Yes, sir; I meant "return." I presume they pay 5 per cent for their money, or thereabouts; but the return on the capital earned by the railroads when the Government took them over was 1 per cent and for the last three years it has averaged two-fifths of 1 per cent.

Mr. SIMS. The net income from operation has increased from 1 per cent to 2 and a fraction?

Mr. ACWORTH. No, sir. What you call the "operating income" was sufficient when the Government took it over, to pay 1 per cent on the capital. It is now only sufficient to pay two-fifths of 1 per cent.

Mr. SIMS. I thought you said  $2\frac{1}{2}$ ?

Mr. ACWORTH. No; two-fifths of 1 per cent. Now, this is a very striking thing. I happened, quite accidentally, to hear it in the city of London, that just before the war the Italian Government was negotiating with private concessionaires not to construct further railways itself, but in two places in Italy to employ a private contractor, to give him a very handsome bonus to construct a railroad, operate it himself, or form a company to operate it, and hand over to him some portion of what had been the State railway. I can not say how far that went, but it was new to me. As I understood the situation from my friend who told me, who was personally concerned in the transaction, the moral was that the Government had come to the conclusion that they could not afford the luxury of operating themselves, and thought they could make better terms by employing a private company to do it.

Mr. SIMS. For that particular line?

Mr. ACWORTH. Oh, yes; no important part of the whole State system; I do not suppose that would be possible, for a moment.

Now following out what I have tried to say, that there is always some main reason for the Government taking over the railways, apart from theoretical considerations, it is quite clear that the real reason for the State resuming possession in Italy was that things had got into a knot. Efforts to disentangle the knot failed; the companies would not accept the Government's terms and the Government would not improve the railways for the benefit of the lessee companies, and they found it impossible to disentangle the knot, and consequently they came to the conclusion that the best thing to do was to cut the knot.

Mr. SIMS. You mean that private ownership, under the conditions that existed in Italy, had proved a failure and something had to be done?

Mr. ACWORTH. I do not know that I should have put it that way, sir. I should have rather put it this way: That it had been found

impossible to make satisfactory terms between the private owners and the Government for continued operation.

You will observe that there was a 63-year lease, with power to break it at the end of 21 years. It was quite evident that they had got to rearrange their terms, and the lessor and lessee could not agree on terms for the next 21 years, and accordingly the lessor said, "All right; you get out of the house and I will occupy it myself."

Mr. SIMS. As I understood your description of the conditions in Italy, they had become such that it was necessary for something to be done that had not been done theretofore with reference to the transportation system of that country?

Mr. ACWORTH. Yes, sir. Unquestionably improvements were urgently needed. The question was whether terms could be arranged with the private owners, under which the private owners would be willing to make them.

Mr. SIMS. I said, under the conditions then prevailing in Italy.

Mr. ACWORTH. Yes. I only wanted to be sure that we were both looking at it from the same point of view.

Then, we come next to Australia. Now, all the Australian colonies are in the same situation; they all own their own railways. As you know, there are five separate States in Australia, and New Zealand in addition. All those six colonies own their own railways. There has been talk, of late years, of putting them all together under the Commonwealth Government, but nothing has been done along that line. They all own their own railways, and they all began to own them from the same point of view—that railways had to be made, and that private capital could not be found to make them. The real development of Australia began with the discovery of gold, in the early fifties, when railways became imperative; and it was hardly likely that the small amount of capital that was available in Australia would be put into possibly a 5 per cent investment, in the height of the gold fever; and accordingly the money was borrowed in England by the State governments, and they built their own railways.

I have attempted, later on, to make a somewhat careful comparison between conditions in Australia and conditions in Texas, which seems to me to be the most fairly comparable part of the United States; but, perhaps, I might tell you here a little piece of personal experience.

Some years ago a friend of mine went from America to the chief commissioner (that is, manager) of one of the Australian State systems. He sent back to me a return, showing that he had improved the conditions very much since he went there. There was no question about the improvement; but the return was not in a form that I wanted, and I wrote to him, and I said, "Surely you, with your American experience, must be accustomed to putting those things in terms of ton-miles? There are no ton-mileage figures in this. Do you not keep them?" And some time afterwards my friend replied, "Yes, I keep them; I do not publish them." I said, "Why do you not publish them?" He said, "Well, if I did, they would show a charge per mile so high that people in my State would naturally compare them with corresponding figures in America and other countries, and there would be such a demand for decreased

rates that it would be quite impossible to withstand it, and it would drive the railroads into bankruptcy." That was his own account of it.

Mr. SIMS. It would drive them into bankruptcy, provided the decreased rates were adopted which he thought would be demanded?

Mr. ACWORTH. Yes. There are two colonies that do publish their rates; those are New South Wales and South Australia. As you no doubt know, sir, the average rate in the United States is just under three-quarters of a cent—

Mr. SIMS. Per ton-mile?

Mr. ACWORTH. Yes; per ton-mile. In Canada it is—or was the last year—exactly three-quarters of a cent. The two Australian colonies that give figures show charges of 2.20 and 2.12 cents per ton-miles, roughly, three times.

Now, I am not going to say to you that I think conditions are entirely comparable, but I think any railway man would say that a three-to-one difference can not be accounted for, can not be justified. The rates in Australia were such that the public, if my friend had drawn their attention to it, would have got up and said, "Look here; this is not justifiable, and you have got to reduce them." As I say, if I have time later, I want to come back to a comparison between one particular State, where figures are more or less available, and Texas.

But I should like now to read this, as an evidence, not from anybody who is prejudiced. The Austrians have gone backward and forward. In early days the State built the railways; then it sold them; nowadays they have bought back nearly all of them; they are nearly all in public hands. There was one of their private railways—one of the oldest Austrian railways, the Kaiser Ferdinand Nordbahn, which serves very important coal mines in Bohemia, which was always very rich. For five years before 1906 it averaged a 12 per cent dividend. In 1906 the Government took it over, and in 1910 the President of the Austrian Chamber of Deputies described the result as follows:

We have always been in favor of the State taking over the railways, but if we had been able to foresee the results of the management I assure you we would have hesitated a little longer. We are still in favor of the principle, but it does seem to us that our Government has performed a remarkable feat when it has succeeded in creating a deficit on the Northern Railway. The Government have enlisted an army of new employees; they have gone too far in the reduction of hours of labor; instead of commercial management they have appointed lawyers to posts that require business men or experts; they have established an entirely unpracticable bureaucracy. At the present moment we are face to face with a deficit of \$25,000,000. There would be no deficit at all if the return from our railways were that which it ought to be. I repeat that absolute imbecility has characterized the taking over of our railways. We must introduce business ideas into the Government service.

I think that figure of \$25,000,000 is obviously not a deficit of the Northern Railway alone but is a deficit of the whole railways.

Then, sir, just one word about Holland: Twenty years ago there were three systems in Holland—one that was built by the State itself and two others that were built by companies. The State, though it built, never operated, and there were three companies operating. In 1890 the Dutch Government copied the Italian system; they bought up the railways and rearranged them on the Italian system of making

each of the two companies reach the big points—Amsterdam and Rotterdam and The Hague and Utrecht, and so on—so that they could compete at all the important points.

And that has been the system in Holland ever since. In 1908 there was a commission brought forward in Parliament in favor of nationalization, and it was defeated. A parliamentary commission was subsequently established to consider the question, and that also reported against nationalization. So you have Holland at present in between Germany on the one hand and Belgium on the other, in both of which the States entirely own the railways; and Holland stands out not only for the principle of private ownership but for the principle of competition.

Now, sirs, I come to France: I said France had five systems. To be accurate, it has six, five of them radiating from Paris and the sixth down in the southwest, between Bordeaux and the Pyrenees, which reaches Paris over another line of railway from Bordeaux. That was the system laid out by France as early as 1842, and, as I said, avoiding competition. The Dutch and the Italian systems deliberately arranged that the systems should meet at the big competing points; the French Government deliberately arranged that they should meet at the noncompeting points—that the segments of the circle should meet at points where there was very little traffic, so as to prevent, as far as possible, competition.

The French Government from the beginning has set its face against competition. No rate can be altered in France or put in effect without the consent of the Government, and the French Government deliberately approves of arrangements by which in cases where there are two possible routes the companies agree by which route the traffic is to go, and they decide that it shall go the way they want by putting in a higher rate on the road they do not want it to go over; and this is done with the entire approval of the Government, in order to prevent competition. So you have six non-competing companies, pooling their traffic in cases where it is impossible to avoid competition, as, for instance, where you get outside the country, where passengers are coming from Switzerland to Paris, and they can use their choice of either one of two routes, pools are made with the full approval and supervision of the Government. And that system has gone on from the very beginning of French history.

In the early eighties a number of small local lines grew up about the least profitable part, from a traffic point of view, of the whole of France, the district lying along the Bay of Biscay, north of Bordeaux. A number of little separate lines were built there, and then they were consolidated into one system, managed by the State. That was the beginning of State ownership by France. But it was quite unimportant; it did not compete and did not have much effect on the general situation. It was a very bad financial bargain for the State: they only earned about 1 per cent, I think, on their money. That probably was unavoidable, owing to the fact that the district was very poor. But later there came a question of the Western of France. The Western of France serves the district from Paris to Dieppe and along the coast southward to the Loire. It serves practically Normandy and Brittany, a comparatively poor district. There

used to be very valuable traffic to Havre and Rouen, but a good deal of that was lost, owing to the fact that the Seine was canalized; and boats, I think, of a thousand tons go up to Paris and a good deal heavier boats as far up as Rouen.

So the Western of France Railway was in low water financially. As I dare say the committee know, the Government guarantees a dividend on all the railroads in France. It guarantees what sounds like enormous dividends—7 per cent is the lowest and 13 per cent is the highest. It is, however, not as serious as it sounds, because only 10 per cent of the French railway capital is in the form of shares. But the Western was guaranteed 7 per cent on its capital and did not earn it, and the Government had to make up the difference, and the Western of France became a sort of battle ground between the people who believed in private ownership and the people who believed in State ownership. Naturally the workmen, the employees on the railroad, were desirous that it be taken over by the Government. I think they always are, at least in Europe. The Socialists naturally regarded it as an article of their creed that they should vote for it, and for many years there was a discussion as to whether the Western of France should not be taken over. It was taken over in 1909, but the history of the transfer is very interesting.

Naturally it required a majority in both houses to pass the bill. In the first house the bill was passed in spite of the opposition of almost, if not quite, every representative of the district that was particularly affected. The French Government always refers questions of this kind to the chambers of commerce, which are incorporated bodies in France, and requires their opinion. Practically every chamber of commerce of any town of the smallest importance in France was opposed to the nationalization, but it got through the chamber in December, 1906, and was hung up in the Senate. The Senate, it was well known, had a majority against it. Finally M. Clemenceau, who was prime minister and a rather powerful person, gave it to be understood that unless the bill passed he would resign office, and in the circumstances as they then were not a few of the Senators, though they disliked passing this bill, disliked the resignation of M. Clemenceau even more, and the bill was passed by a majority, I think, of 4, after 18 months' waiting, in June, 1908, and the transfer took place in the beginning of 1909. Now, the figures of the result have been very common knowledge among railway people in Europe in the years afterwards, and they have been canvassed again and again.

I have tried to cut it down as short as I can. In the five years before the transfer the gross receipts rose in round figures from \$37,000,000 to \$42,000,000. In the five subsequent years, 1909-1913, the gross receipts rose—the war has naturally upset the figures altogether—the gross receipts rose from \$43,300,000 to \$48,700,000, a little more rapid rate of increase than before.

In the five years before the transfer the operating expense rose from \$20,800,000 to \$28,400,000, and almost the whole of that increase—at least a very large part of that increase in operating expense—was in the last two years.

Once the chamber had voted the transfer it was quite obvious that the company was in the position of people who were going to be

sent about their business, and the discipline on the line went to pieces and the expenses grew very rapidly. For the last year of the company's operation the operating expenses were \$28,400,000. The first year after the transfer the operating expenses were \$30,304,000; the next year they were \$34,900,000; the year after they were \$34,450,000, and in 1912 they reached \$41,800,000. In 1913 they fell back to \$41,470,000. To earn a net revenue, increased by 31 per cent, the operating expenses increased by 100 per cent. The net revenue was never below \$13,760,000 in the worst year of company rule. It fell to \$5,552,000 after the Government had been in possession four years. The operating ratio had risen under the company from 56.4 to 67.8. For the next five years it was as follows: 72.7, 79.9, 87, 89.4, and 85.2.

It is fair to say there that the operating ratio of all the companies has gone up. Of course, you know this has happened in other countries besides France. I will show you how much it had gone up in others. For the years 1905 and 1906 the operating ratio of the five great companies that still remain was 50.3; for the two years 1912 and 1913 it had risen to 58.4. That is an increase of 8.1 but the rise on the State railway is from 56.4 to 89.4, a rise of 8.1 in the same case and 33 points in the other.

Mr. SIMS. That means operating expenses?

Mr. ACWORTH. Yes; the ratio of operating expenses to total receipts. That is to say, it costs the other five companies, when their expenses were highest, \$58.40 to earn \$100. It cost the State \$89.40 to earn \$100. The companies had 41.6 per cent of the total receipts left to pay their charges, and the State had 10.6 per cent.

The main argument used, at least a main argument used for the transfer, was that as the company could not and did not earn its full dividend and had to come on the State year after year to make up the balance; they earned 3 or 4 per cent or something of that kind and the State guaranteed them 7, so the State had to find the difference, and the advocates of State ownership claimed that it was not to be expected that the companies would operate economically because they never could earn their 7 per cent and therefore it did not matter how much deficit they left on the Government. That is to say, if a company earns more than its guaranteed dividend, it gets some part of the surplus; they divide with the Government beyond the guaranteed amount. So, clearly, if the company can earn 8 or 9 per cent, it is to its interest to operate economically so that it may get something more than 7 per cent, while if it can only earn 4 or 5 per cent it does not matter which it is, because any difference between the 4 or 5 per cent and the 7 per cent the Government has to make up each year.

Mr. SIMS. Was it considered by the Government in making the guarantee the dividend they ought to earn?

Mr. ACWORTH. It goes back so far in history; you see those guarantees back to the fifties. When it was first put in—it is really this: The original companies started naturally to pick the best bits there were. The Northern Co., for example, made its start for Calais and the Brussels frontier. The Paris & Lyons Co. built the great artery from Paris to Lyons and Marseilles and the Mediterranean. Each company built to start with a trunk line that obviously must be very profitable. Then the Government said to them, "Now, we

want extensions spread over the country," and the companies said, "Well, that will water our dividend." And thereupon the Government said, "That is fair; you are earning either 10 per cent a year or 7, whatever it is, and that seems fair. We will undertake that your dividends will be maintained." In this way I take it the 7 per cent in the case of the Western was accepted.

Mr. SIMS. That it should not be below 7 per cent?

Mr. ACWORTH. Yes. "We will undertake to say your revenues shall not suffer because you are making these extensions."

Mr. SIMS. Undertaking to get the extensions when the revenues would not warrant the construction?

Mr. ACWORTH. Exactly.

Mr. SIMS. The Government to divide on any amount which might be made over and above?

Mr. ACWORTH. That is it, broadly. The company, if I remember right, takes the first 1 or 2 per cent beyond the guaranteed amount wholly, and then begins to divide—something like that. But, roughly speaking, there has not been very much extra profit. The companies, as a rule—the Northern used to get something more; it used to get 15 and 16 per cent, and it was only guaranteed 13 per cent—most of them, roughly speaking, earn about enough to pay their guaranteed dividends. But you will remember, sirs, because the people often misunderstand the position, that this guaranteed dividend only applies to 10 per cent of the total capital.

Mr. SIMS. In other words, it is a very small capital, or volume of capital, it does apply to?

Mr. ACWORTH. That is so, sir.

Mr. SIMS. The object of the Government being to try to develop every portion of the country that demanded railway facilities in order to be developed?

Mr. ACWORTH. Yes, sir; practically all the new lines are built out of the issue of bonds, and the bonds are in effect, though not in form, guaranteed by the Government. The Government makes an arrangement under which it is quite certain that the company will be able to pay the interest on the bonds and the sinking fund that is always attached to those securities.

Mr. SIMS. Then the Government absolutely regulates the charges of the railway companies as to rates and fares?

Mr. ACWORTH. Yes; and of course this system has the advantage, on the one side, of protecting the public, and, on the other side, the Government has an interest in not reducing the charges too low, because it would have to find the balance. It is a very complicated arrangement that has grown up in the course of many years, and that works in France, but could not be established in any other country to-day, it is quite clear.

Mr. SIMS. Because the same reasons do not exist, perhaps, in other countries for adopting such a system?

Mr. ACWORTH. The French system is obviously incapable of transportation. The underlying idea is another question—practically the partnership between the State and the railways—but the real point, I think, is that the Government has been behind the railroads and has protected the railroad capital from the beginning.

When I broke off the story I was dealing with the argument used by the advocates of nationalization, that, as the company would not

work to earn a dividend, therefore the Government had better take the railway, seeing that the Government's interest was to make the best of it. The fact has been this:

During the last 10 years of company management the State had to pay an average of \$2,894,280 a year to meet its liability under the guaranty to make up the deficiency in net operating income. That is the amount the Government had to make up to complete the 7 per cent dividend. When the Government took over the railway it secured the old shareholders; it did not pay them out in cash; it secured to them their old revenue as an annuity. During the first three years after the transfer the sums it had to find under the same head were, in the first year, \$6,753,320; the next year, \$8,875,792; and the next year, \$14,934,484. For the year 1913 the figure was \$14,715,237. That was the last year before the war, and that compares with the average of \$2,900,000 in the last 10 years of company management. That is what it cost the public in hard cash, but it cost them far more than that. The service was so demoralized that the newspapers were absolutely filled with the stories of how the service was being mismanaged. They had accidents all over the system that frightened the public.

The Western of France always ran the slowest expresses of all the companies, and they increased the time allowed for all their expresses. The thing got so bad that employers in Paris insisted that their staff should live on the Western of France Railway because they never arrived at their offices in time.

Here is a good instance. The compensation for accidents had been, under the old régime, about \$400,000 or \$500,000 a year in the last days of the company. In 1911 the figure had risen to \$2,045,291. The minister of public works himself publicly criticized the State administration as a "frightful fraud." He speaks of "the deplorable situation of the State system, the insecurity and irregularity of its workings."

Now, there is an account given in a conference we had in London on this subject in 1911 by M. Leroy-Beaulieu, who himself was a deputy, and he gave a long account of the working of this system. He puts it down to various reasons. He said:

In the first place, it is the abuse of formalism and red tape, with all the delays which follow and which are directly in conflict with commercial needs. In the second place, it is the lack of stability. The director and all the chiefs of the service change at the will of the ministers, whilst in the private companies the higher personnel is maintained a long time, fulfilling the same functions.

It is next the political influence which enters into the choice and advancement of the personnel. It is, lastly, the lack of discipline, which also results from the political influence at work. From the electoral point of view the lower staff, being much more numerous, will always have much more power than the superior staff. It is always on the side of the former that many deputies will be systematically ranged. Above all, it is impossible to be at once controller and controlled. If one of the great French companies under private management renders poor service, the public opinion is not slow to move the public power, and as this has the means to bring pressure indirectly but in many ways upon the companies, they are led to reform. On the contrary, when complaints are made against the State itself, the administration, irresponsible, does not listen. Rather it seems indignant that particular individuals or even large associations should dare to find that all is not perfect. The minister of public works in the chamber said:

"I have not seen without a certain astonishment the chambers of commerce criticize the actions of the State in its (their) reports upon the railways."

The same minister has dismissed an employee from his office who was at the head of a section of a passenger line which emitted protestations against the delays on the western State service in the Paris suburbs.

**M. Leroy-Beaulieu finishes his story this way :**

From all points of view the experience of State railways in France is unfavorable, as was foreseen by all those who had reflected upon the bad results given by the other industrial undertakings of the State, such as telephones, matches, and many others. The State, above all an elective administration, can not be a good commercial manager. It works expensively and is powerless before its employees. The experience which we have recently gained has had at least one result. It has provoked a very lively movement not only against the repurchase of the railways but against all extension of State industry. This result seems to me fortunate. I hope this opinion will be maintained and that not only we but our neighbors may profit by the lesson of these facts.

I happened to be in the chair at the conference at which M. Leroy-Beaulieu read his paper, and he told me personally that he thought the effect had been so great in France that any agitation to nationalize the rest of the railroads was killed for a generation to come. That was his account of it in 1911.

M. Leroy-Beaulieu gives instances of how red tape has accounted to some extent for the enormous increase in expenses. He says:

In the central office, when the railways were handed over, there was 1,526 employees. Within three years the number had increased to 2,587.

He says further:

This is partly due to political pressure and partly to excessive red tape. For example, in the Cuen Division the preparation of the pay sheets, which under the company took 9 persons 3 days (27 days), under the State administration took 12 persons 6 days (72 days).

He says further:

According to official documents there are not less than 96 persons receiving a salary of more than 10,000 francs (\$1,929.52) in the State system as against 33 on the system of a neighboring company of much the same mileage but with much higher receipts.

Here is a quotation from a report of the budget committee. They say:

The statements addressed to the budget commission by the administration were manifestly inaccurate. \* \* \* We wrote for further statements, more particularly the numbers of the personnel. \* \* \* The minister replied (three years after the railway had been taken over) that the enumeration of employees had not yet been made. \* \* \* This example suffices to show the trust that may be placed in the other parts of the budget estimate.

That is not the opinion of M. Leroy-Beaulieu, who is a hostile critic, but it is a report of a committee of the chamber that approved of the plan, based on a draft that was drawn up by a deputy who was recognized to be one of the advocates of State ownership.

I think, for the sake of giving the committee something a little lighter, I must read a story here. It is a story of how red tape strangled the line. This was read in the Chamber of Deputies. It is a letter from a station master on the line. It is as follows [reading]:

In the time of the Western Co. we station masters had orders to use the rolling stock as quickly as possible and to send to a given station all that we did not ourselves require. Under the State all is changed. Every station master is forbidden to load any wagon without the orders of the distribution bureau of the district.

Mr. SIMS. "Wagon" there means what we call a car, does it not?

Mr. ACWORTH. Yes, sir.

This bureau is, as is well known, a new creation specially designed for the purpose of finding situations for so many more bureaucrats. Recently, having received two wagons loaded with horses, accompanied by an order to send these wagons to Caen after they were unloaded, I thought to do well by loading in these two wagons 200 sacks of grain, which had been waiting in the sheds for several days to go to Caen. But, alas, I did not know the bureau of distribution. The next day I saw my two wagons return, and I received at the same time an order to unload them. I was reproved into the bargain for excess of zeal. I had to obey the order. That evening I sent the wagons empty to Caen. Next day I received two others, also empty, in which to load the grain.

Now, sirs, that seems to me to be the most relevant part of the evidence available in foreign countries on the matter. That practically gives the story of how and why the principal European countries and also Australia adopted State ownership. If you come to apply that to England or the United States, it is evident that there is not here a political reason corresponding to the German necessity for unity. There is no reason for unifying the United States or the United Kingdom.

There is clearly no military necessity, which was a point on which very great stress was laid in Germany. Clearly, there is no need to nationalize railways in the United Kingdom or in the United States for lack of private enterprise. England was the first country in the world that practically completed its railway system. I suppose 20 years ago we already had within 20 per cent or 15 per cent of all the railways we have now, and if you were to bring in a railway man from outside and show him our railway system to-day he would be much more likely to say that we have too many railways than that we have too few. So there has been no question with us of lack of private enterprise, and while I will not presume to say anything about the United States, I suppose it would not be suggested that in the United States private enterprise fell short. For example, as I show later, I think Texas might fairly be compared with Australian conditions, and, speaking roughly, Texas has 4 miles for 1 in New South Wales. Private enterprise has given Texas 4 miles where the State has given New South Wales 1 mile of railway. And probably, after the United States, the country where most has been done to develop the railways in advance of settlement, has been Argentina. That also has been wholly private enterprise.

Mr. SIMS. Do you know how many railroads are now in the hands of receivers here in this country?

Mr. ACWORTH. Yes, sir.

Mr. SIMS. How many miles are in the hands of receivers?

Mr. ACWORTH. Yes; I think about 40,000.

Mr. SIMS. More than in the whole Empire of Germany—more mileage?

Mr. ACWORTH. Yes. About the same or a little more.

Mr. SIMS. Nearly twice as much.

Mr. ACWORTH. But even a railway in the hands of a receiver serves the public—not very comfortably for the capitalists, but for the public.

Mr. SIMS. You just said that private enterprise is sufficient for all these things. I just wanted you to know how these things are going here.

Mr. ACWORTH. I expect our railway friends would tell another story. I imagine they would say that it was a question of rates; that if they were allowed to put up their rates, they would get out of the hands of the receivers; but I must not, of course, go into that.

Then, sir, I do lay stress on this point, that whatever may be said in favor of State ownership it is clear that it does not promote development. The State hesitates very much more in moving in advance of the population than private enterprise does. Belgium, for example, is notoriously much behind—it was before the war—in railway facilities. The Government had promised things year after year, but the whole railway system wanted a great deal of new capital put into it, which the Government would not furnish.

Mr. THOM. Did you say that Belgium was behind railway facilities or that the facilities were behind?

Mr. ACWORTH. The Belgian Government had for years refused to spend the money that was obviously required to be spent to keep the Belgian system up to date. There was need both that the railroad should be improved and also that new lines should be made, and year after year they put it off. That would be admitted, I think, by anybody who knows the Belgian conditions.

Now, the Prussian Government—and this is a very curious instance—the enormous iron traffic of which we hear so much in the papers of the district around Metz—that enormous iron traffic is very largely carried first by rail quite a short distance to the river and then put onto water; and the Prussian Government has steadily refused to build the railways to keep that traffic on the rails from origin to destination; and so it is taken a short distance and then put onto water and carried by water and then put back again onto rails to reach its destination. The Prussian Government has steadily refused to build the necessary railways. I believe there are more complaints than usual in America to-day on account of car shortages, but the country of the world, where we see in the railway papers that they have car shortages year after year, is Prussia. It is a matter of regular experience with them that when it comes to the autumn and there is a big movement of domestic coal the railways simply say that they can not furnish cars to move the traffic; they are asked why they do not have more cars, and they reply frankly that it does not pay to build a car if you only want it for the three rush months of the year and have to keep it lying idle on a siding for the remaining nine months of the year; they say you must suit your traffic to our cars.

Mr. SIMS. In other words, they give a business reason for it?

Mr. ACWORTH. Yes.

Mr. SIMS. Which reason applies here to our privately owned roads?

Mr. ACWORTH. Yes; quite so.

Senator ROBINSON. May Mr. Acworth not finish his statement? We are all very much interested in the statement he is making, and we adopted a rule that we would not interrupt him, and I suggest that we conform to that rule and let him finish and then take him under examination as you may care.

Mr. ACWORTH. Then, in India, the English Government either owns and operates directly the railways or it is the owner and has leased them to private companies. It keeps a very close control

on the whole railway situation, and it will not allow private capitalists to come in and build new railways except under very stringent conditions. Broadly speaking, you may build a tributary to an existing line, but you may not build a line that might possibly divert certain traffic from Government railways. And the Government control in India has resulted in this: That though there is undoubtedly an immense amount of traffic wanting development, and though the existing lines and existing rolling stock are very much overtaxed, very little new money gets into the Indian railways. The Government says—and says quite truly—“We can not afford to spend more than a few million sterling in the average year on railway development,” but they will not let private capital in.

Now, Rhodesia has a population of 32,000 white men, and there private enterprise has already supplied 2,000 miles of railway lines for those 32,000 white men. In the whole Union of British South Africa, with a population of a million and a quarter whites, and after 50 years of development, they have only got 8,000 miles of railway. There they are State lines; but in Rhodesia, with a population of 32,000 whites, they have already obtained from private companies 2,000 miles of line. And the colonists complain that they have not got enough.

I think that it is evident that in the nature of things it is much more difficult to get sufficient railway development from a government than from a private company. The government has a large number of competing demands on its purse. The government can only afford to raise a certain amount of new capital or to provide a certain amount of new money each year, and there are innumerable competitors for that money; where, in the case of a private company, if it sees a profit, it has nothing else to do but to deal with railways, and it will go out into the open market and endeavor to get the money.

Then, it seems to me that a great many of the arguments they have applied in other countries—the argument of military necessity, the argument for political unity, the argument that you can not get the money elsewhere, and that, therefore, the State must do it—all those arguments have no application to countries such as the United Kingdom or the United States. It is clear that if there is a case for State or National ownership here, it must be made on the ground that the public will be better served.

Senator ROBINSON. Mr. Acworth, if it would suit your convenience, I think the committee would like to suspend now, and resume the hearing at 8 o'clock this evening at this chamber.

Mr. ACWORTH. If you please, sir.

Senator ROBINSON. Very well; the committee will stand adjourned now until 8 o'clock this evening.

(Whereupon, at 11.52 a. m., the committee adjourned until 8 o'clock p. m., to meet at the same place.)

#### AFTER RECESS.

The committee reassembled at the conclusion of the recess at 8 o'clock p. m., Hon. William C. Adamson (vice chairman) presiding.

The VICE CHAIRMAN. The committee will come to order. Mr. Acworth, are you ready to proceed?

Mr. ACWORTH. Yes, sir.

## STATEMENT OF W. M. ACWORTH—Resumed.

Mr. ACWORTH. Mr. Chairman and gentlemen, may I just say, before I go on where I left off, that I do not think I made myself as clear as I ought to have done this morning. I was speaking about the different States in Germany and pointing out that there were no German railroads, but there were Prussian railroads and Saxon railroads, etc., but I ought to have carried it further and said that, though, from the point of view of ownership, they are entirely separate—the Prussian profits go to Prussia; there are no profits in the other States; they just about pay their way—though that is the case as to ownership—as far as operation and control are concerned they work entirely as one system. There is an imperial railway office, whose business it is to secure uniformity of tariffs and uniformity of railway regulations, and everything of that kind, and there is nothing corresponding to the diversity, whether it be the amount or rate that the railways are allowed to charge or whether it be in the regulation as to the running of the trains, or anything of that kind, that exists in this country. In all such matters there is absolute uniformity throughout the German Empire.

I was asked a question about the French railways, and I said that the French method was so elaborate that I do not think it could be transplanted into this country. I was not attempting to suggest that the essential idea of systems occupying exclusively a certain region of country without competition could not be transplanted. Of course, if it were the view of the committee that that would be a desirable thing in America, there is no possible reason why it should not be recommended—why the French system should not be recommended. What I did mean was that the elaborate system of guaranty of revenues, the complicated relationship between the State and the railways is so essentially French, and so essentially an historical growth of 70 years, that I do not think it could be transplanted.

I think I have not made that as clear as I ought to have done, so I hope you will forgive me for that explanation.

Now, I got this morning as far as page 27 in this statement, and we had just got to where I was raising this point that there no doubt is a temporary position in the United States where private enterprise, that has always been, one may say, in advance of development for the greater part of history, has almost stopped. One knows that there are hardly any new railways being made.

I wanted to lay stress on it because I found I had said a certain thing. I wrote this paper more than six months ago and I suggested that the difficulty of arrest of development in the United States had been simply a question of money; that the money could not be got because it did not pay, and I suggested that if the railroads had sufficient income there was plenty of enterprise and plenty of capital available, if the capitalist thought it was a good thing to put his money into, and I found I had written this sentence:

To compare it [nationalization] in importance with the alternative of allowing the existing companies to raise their rates by an average of a mill per ton, which would make all the difference between poverty and affluence, would be almost farcical.

And this afternoon I went to the other end of Pennsylvania Avenue and heard a case before the Interstate Commerce Commission, and it just shows how the situation in railway matters changes. On the evidence as it was available in England six or eight months ago, one would have said if the railways got an extra mill per ton per mile they would be exceedingly well off. The situation has changed so to-day that the evidence is that with that increase they would just about hold their own. So the increase that I then thought was something that would make them rich is something that, under the extraordinary circumstances developing here to-day would make them, perhaps, not much poorer than they are at present.

Well, I thought six or eight months ago that the position in the United States, the sudden arrest of development through private enterprise, was something that eventually would pass off; it would be settled in some way or other; and therefore I ventured to say that the argument for State ownership, either in England or the United States, must rest on the question whether on the whole private ownership or public ownership would give the best service, taking that in its widest sense.

There was a distinguished English authority, Sir George Gibb, who put forth the idea—I happen to know that he has changed his views since—that private ownership was unquestionably the best in the earlier stages of the development. Private capital, he said, takes risks and has more initiative, generally, than you would expect from Government organizations. But after you have passed that stage he thought it was arguable which would do best. He thought there were considerable advantages on the Government's side in dealing with an existing completed system.

I tried to consider it on that basis, and the first thing that occurred to me was the question of capital. Now, there is one point there that is very clear, and that is if the State puts this money in, builds a railroad that is unprofitable, the State's responsibility is pledged; the State for all time has to make up out of taxation the difference between the net income of the railway and the money required for interest on the bonds with which it has been built. The private railroad, on the other hand, takes its chance. If private capitalists build a railroad and it turns out a failure, or does not pay, or does not pay for a long time, the capitalist loses; the public does not lose. The public as a whole goes scatheless, the particular capitalists have made a bad investment, and that is the end of it; and that, certainly in England, and, I imagine, in America also, is quite an important consideration. Bad bargains are left in the hands of the people who made them and do not invoke the responsibility of the State.

There is no question that in England, where we have had the same process that you have here of large companies absorbing small companies—there is no question, I think, that as a rule the capital of the small company, which is generally an unprofitable company because it has only second or third class districts to develop—the capital of the small company is nearly always written down before it is assumed by the big company, and that is done at the expense of private enterprise, and not at the expense of the public. I know, within the last few years, of a company being taken over in England, and some, at least, of its bonds were paid off at the rate of 1 per cent of

their face value—not a large amount of capital, but a large reduction in capital. Evidently the same thing must have happened here in, I imagine, a very considerable percentage of cases. About 33 to 40 per cent of the total share capital of your railroads pay no dividends. No doubt a considerable proportion of that share capital represents what were formerly bonds, which could not get their interest paid as bonds, and which in a reorganization were written down to the lower standard of shares, and even then they do not get their interest.

So, I think that is one point that should be borne in mind in discussing the question of private versus public enterprise from the viewpoint of capital. Now, it is clear that public enterprise has the advantage that it can raise capital cheaper. That is one of the common arguments in favor of state ownership. I do not think you can really judge here—you may be able to judge in a year or two when you have a great national debt—but at the present moment your national debt is so very small and so much of it is in the form of bonds that have a special value for banking purposes that you really can not compare the interest on your public debt with the interest on first-class railway bonds. In England we have been able to do it always, and I think it is safe to say that the difference between the rate of interest on first-class railway bonds and the rate of interest on Government securities is certainly not more than one-half of 1 per cent. So that admittedly there is an advantage on the public's side in the cost of raising the necessary capital for railway enterprise, but I believe one-half of 1 per cent represents the measure of that advantage. Against that you have to set the fact that private enterprise—I think it will be almost admitted here; it certainly would be admitted as a business proposition in England—that private capitalists can make \$100 go farther than the Government will.

Certainly in the railway world that belief is borne out by the evidence.

I put down one figure: The capital cost of the American railways—of the average mile of American railways—is \$66,500. Now, in New South Wales and Victoria, with railways built by public enterprise, the capital is, in the one case, \$77,000, and, in the other, \$65,000—nearly \$66,000—practically the same as the United States. No doubt there are very few, if any railroads in the Australian colonies that are as cheaply built as some of your line. They were mainly built by English engineers or engineers with English training, and we have a reputation for building very permanently. I imagine that you would find in the United States many railroads that were built pretty cheaply, and I doubt if you would find many in the Australian colonies that were built equally lightly—I mean inexpensive in method of construction. But it almost seems to go without saying that the average railroad in the United States is a more elaborate article than the average railroad in places where there is very much less traffic. Certainly there must be a very much larger amount of equipment in America. I mean to say, if you take a line like the Pennsylvania, the New York Central, or the Baltimore & Ohio, and lines of that kind, and the trunk lines all across the continent—they are built up to standard—that there can be no comparison with in Australia; and yet, the two principal colo-

nies in Australia—and they are the only ones that can be fairly compared, because they are the only full-gauge railroads—the principal colonies have a capital cost, the one as high as the United States and the other about 16 per cent higher.

Certainly I think any engineer would admit that the United States had got an extraordinarily large amount of value for their money in the railroads, taking into consideration the fact that they are only capitalized at \$66,000 a mile. So that I suggest that the evidence would seem to be that, though the railroads under public management can get their money cheaper, on the other hand, they do not make it go as far, and you can set off one against the other. But the real question is not one of cost, to begin with; it is a question of whether the public gets better service, on the whole, under the one system or the other. Now, I have pointed out how impossible it is to judge merely from rates. For example, you pay 2 cents a mile or  $2\frac{1}{2}$  or  $2\frac{1}{4}$  cents in the United States to carry a passenger. In India they carry a man 5 miles for a penny. Now, admittedly, the Indian traffic, at that rate, is exceedingly profitable. It pays the railroads handsomely to carry passengers 5 miles for 2 cents, and yet the Interstate Commerce Commission says that your passenger rates are not high enough, because they are not profitable. Of course the Indian conditions are so absolutely different that it is absurd to attempt to compare them. For instance, the Bengali goes to the railway station; he knows nothing about a time table, and he simply squats down until the next train comes along, which is very likely to be six or eight hours hence, and he cooks his food on the platform and patiently waits for the train to come along; and when he gets on to the train he is perfectly contented to be packed in like a sardine, and he does not expect anything except that; and the average train carries something over 500 passengers. So in a great many ways the conditions are not at all comparable. But if you take the countries where you really can make a comparison you can get figures something like this: In the United States the freight rate is a little less than three-quarters of a cent a ton-mile. You get 1.37 cents in Germany, and you get 1.3 cents in France—not very far from double the American rate. Now, in western Europe that is practically as low as anything except Belgium, and Belgium is 1.13 cents. So from the point of view of freight rates there is no comparison between the price at which freight is carried in the United States and the prices at which it is carried abroad.

The nearest approach to a fair comparison with the United States is, clearly, in Prussia. Prussia has had exceptional advantages. The Prussian population has increased very greatly since 1880, which you may say was the time when the railways were all practically in the hands of the Government. The population has increased 60 per cent, and the town population, which is really the population which produces most of the traffic, has increased more than that. The output of coal—I am dealing with the Prussian railways, and practically all the coal and iron is in Prussia—the output of coal has increased from under 60,000,000 tons to over 250,000,000 tons, and the output of steel has increased from under 1,000,000 tons to over 17,000,000 tons; so that they have had very great advantages. Now, there was a paper read in London in 1911

by Prof. Schumacher, of Bonn, with the quite deliberate intention of showing how well the Prussian railways had done, and he gives this as an instance of what they have done:

In the case of goods sent in bulk, the freight for long distances is as low as 0.8 pfennigs per ton-kilometer.

That is, roughly, 0.35 cent per ton-mile, which is very far from being a startlingly low rate in America, seeing that the average rate for coal last year on the Chesapeake & Ohio Railroad was only 0.304 cent, while for all traffic—high class as well as bulk freight, short distance as well as long distance—it was only 0.38 cent per ton per mile. Then, Prof. Schumacher says another thing: "The receipts amounted in 1880 and 1909 to 4.14 and 3.54 pfennigs per ton-kilometer, respectively," which means 1.65 and 1.41 cents per ton-mile. That is a reduction in 29 years of 15 per cent. I could not find the corresponding American figure for 1880. I could not find it for all the United States until the year 1882, but that does very well for a comparison with 1880. I find that the United States started in 1882 with a rate of 1.23 cents as against a Prussian rate of 1.65, and in 1909 the Prussian rate had gone down to 1.41 and the American rate had gone down to 0.763. So that the American rate started at the beginning of the period 25 per cent below the Prussian rate; and it fell, in the course of 29 years, not 15 per cent but nearly 40 per cent.

I remember, sir, the first time I ever came to America, which is now getting on to 30 years ago; and I remember seeing, what you can still see in England—little four-wheeled coal cars carrying about 8 tons—and England has not a chance to modernize, because England can not in very many places introduce the big American cars and the big American engines. In order to do that they would have to rebuild all our railways; but Prussia can do it as easily as the United States could do it. They run over flat country with very few bridges and no tunnels and no high station platforms; and the Prussians, as far as one can see, might well have copied the American principles and have gone to bigger and bigger cars and bigger and bigger engines and bigger and bigger trains. That is really the reason why the American rates have dropped, as I have shown, 40 per cent, while the Prussians have been obliged to keep them up, because they have remained under their old methods of doing their work with the same type of equipment that you see all over the Continent of Europe.

Now, there is another point: It is quite true, Prof. Schumacher points out, that between 1890 and 1909 the rates did fall 15 per cent, but the fact is that for the last years of that period they really did not fall at all—they remained practically stationary. Writing, I think, in 1912, Monsieur Colson, the great French authority, says: "The Germans no longer make any serious freight-rate reductions. Within the last 10 years the average rate per ton-kilometer has oscillated between 1.37 and 1.34." There is really no reduction worth talking about, and what reduction there has been has been due not to the fact that the rates for coal, or the rates for cotton cloth, or the rates for any special commodity have been decreased, but rather to the fact that the proportion of coal, taking the lowest rate, as compared with the proportion of merchandise traffic, taking the

higher rates, has increased. There is no question of this, that the Prussian railway rates have been maintained more stationary than on almost any other railway, I should imagine, in the world; certainly more than on all the important private railroads.

France, for instance, in the same 10 years during which the Prussian rates remained practically stationary, reduced their freight rates 11 per cent. It should be added, in fairness, that the Prussian passenger fares have on the average rate gone down 9 per cent in the 10 years; whereas the French passenger fares have only gone down 5 per cent. But on the freight rates which, of course, are immensely more important to the development of the country than the passenger rates, there has been a quite considerable reduction in France, and you may say, no reduction worth talking of in Germany for a good many years. France and Prussia are quite comparable countries. But France from a railway point of view has the worst of it in almost every respect. For example, if you take the different points that make a railway operation cheap or dear, France is, by no means, a flat country; large parts of France are very hilly, and quite a considerable proportion is mountainous. Whereas Prussia is almost as flat as any country—as flat as the Mississippi Valley. Coal in France is comparatively dear, and in Germany very much cheaper; and so is steel.

There is a much greater amount of traffic on every mile of railway in Germany than there is in France. Those are all very distinct advantages in Germany, in a comparison with France. But France has one advantage which should be set off. In France the haul is somewhat longer—and the longer the haul the cheaper you can afford to make the rates, other things being equal. But broadly speaking, from the point of view of operating cost, there can be no question that France is a more expensive country to operate in than Germany. Of course operating ratio proves nothing unless you know what the rates are. The average French passenger rates are higher than those in Prussia, that there is a difference of 12 per cent. But the German rates are lower, because the Germans have what they call a "fourth class." As you know, in Europe everywhere there are three classes, but in Germany there are four classes, and the fourth class consists of a vehicle in which there are sometimes a certain number of seats and sometimes none. You are not guaranteed a seat and, if the carriage is at all full you do not get it and you either stand or sit on your bundle that you have brought in with you. Now, France gives no accommodation as bad as that, and therefore the German passenger rate—about 30 per cent of the total of German travel travels in that fourth class—is naturally lower. The French rate is slightly lower, however, both for general freight and also for coal, so that given the great physical advantages in operation which I have mentioned you would expect to find that the Germans are able to operate at a lower ratio than the French. But the facts are the other way.

I will read it in the terms of M. Colson:

From the combined effect of all these causes if the operating ratio in France were 10 or 15 per cent higher than in Germany it would not imply inferior operating ability. But, in fact, the difference is in the opposite direction. If our companies worked as expensively as the German State railways they would spend from twenty to forty million dollars more than they do per annum.

And then he gives the operating ratio. In the year 1900 France operated at 54 per cent and Prussia at 62. In 1910 France had gone up to 60 and Prussia had gone up to 67. And then, after that—it is rather interesting, this point—in 1911 France was 62½ and Prussia was 65. In 1912 France was 63 and Prussia was 66, and in 1913 the figures were the same—France 63 and Prussia 66. You will observe that the difference has decreased; it began 8 points difference, but it dropped to 3 points, and the main reason why it dropped to 3 points is that in the last three years they have included in the French figures the French State railways; and, as I told the committee this morning, when the French States took over the Western of France Railway the ratio of operation went up from 67.8 per cent to 89 per cent, and that upset the French average, so the reason why the French operating efficiency does not appear as much superior to that of the Prussian railways in recent years as in former years is that the French State has come in and spoiled the average of the private companies.

Of course, it is a very difficult thing to make a comparison between one country and another; it is, obviously, not on all fours all the way through, because there are many differences between one country and another, and such comparisons ought not to be pressed too far. But it seems to me it is fair to take New South Wales, which is the largest settled area—although not really the largest area—and the oldest and most populous of the Australian States, and compare it with the State of Texas. Now, I have taken those two and compared them. The whole population of Australia is only 5,000,000 inhabitants, and though it is as big as the United States, of course, it would be absurd to make a comparison on the mere question of the number of square miles, but New South Wales compares fairly well with Texas. New South Wales has 310,000 square miles, and Texas has 262,000. I have taken the population in both cases from the census of 1910, and Texas has a population of 3,900,000, while New South Wales has 1,650,000. New South Wales is not increasing as rapidly.

In 10 years it only increased 21 per cent, whereas, in the same period, the population of Texas increased 28 per cent. There is a very great difference in the fact that nearly half the population of New South Wales—621,000 out of 1,650,000—live in the capital city alone. Texas has four or five good big towns, but the biggest town in 1910 had not reached 100,000 people. But it is fair to believe that one reason why the Texas population spreads and why the population of New South Wales is concentrated in a small area around the capital is because the Texas rates make it possible to send traffic a much longer distance. The New South Wales Government have furnished for the population of New South Wales 4,000 miles of railway, while the private companies have furnished for Texas 15,000 miles. That gives a ratio of a mile of line for 259 inhabitants in Texas, and a mile of line for 412 inhabitants in New South Wales. If you take a comparison of the rates, the average rate in Texas per ton-mile was just under 1 cent. In 1915 it was 0.995. The average rate for freight in New South Wales was 2.2 cents—a good deal more than double.

On the other hand, it should be recognized that the passenger fare is a great deal lower in New South Wales. It is 1.15 cents per

mile, as against 2.42 cents in Texas, less than half. That is caused by the fact, as I said, that half the population lives around Sydney and its suburbs, and everybody goes backward and forward by train, and the commuters get low rates; but of course the Government should get the credit for the fact that they do charge low passenger rates. If you put the two together and count a passenger hauled a mile or a ton of freight hauled a mile, each as one traffic unit, as is not infrequently done when one wants to make a comparison, you find that in Texas the railways carried 8,367,000,000 traffic units—passenger-mile and ton-miles added to gether—whereas, in New South Wales they carried 2,148,000,000. Roughly speaking, the Texan railways did for the public—which, as you will observe, was rather more than double in population—four times as much work as was done for the New South Wales public by the Government railways. If you put together a passenger and a ton, and consider them as a traffic unit, the charges made were, in Texas, 1.17 cents, and in New South Wales 1.60 cents, which is nearly half as much again. As the result of their high rates, the New South Wales railways earned \$9,140 per mile of road per annum. As the result of their low rates, the Texan railways earned only \$6,592. But, thanks to superior efficiency of management, the Texan railways spent much less to carry each unit of traffic. Per unit, the Texan railways spent 0.935 cents; the New South Wales railways spent 1.115 cents. In other words, had the Texan railways operated as expensively as the New South Wales railways, they would have had practically no net revenue at all.

Now, I think that is a fair illustration of what I was suggesting, that the fact of being able to get capital with great ease for a public undertaking does not carry you very far, because, clearly, the Government could raise at any moment all the money they thought it necessary to raise and at low terms of interest. The Texan railways, I am afraid, are not in a position where they could raise all the money they would desire in order to improve their service; yet they have managed to get along and to give the public a better service at a lower rate than the New South Wales railways have been able to do. Of course, I do not wish to press the comparison too far on the committee. I only say that in trying to think what was a fairly reasonable comparison with the United States I thought that taking a district of the United States like Texas and comparing it with the best instance that Australia has to show was as fair a comparison as could be made between two countries, and it certainly does not help the claim that State ownership produces superior results.

Leaving that point you come to the question which I suggested to the committee this morning, and which I will not enlarge upon. The Prussians claimed that private railways—by which, I think, they meant their own railways, as they then were, and it may have been true—opposed desirable improvements. The undoubted fact is that every important improvement in railways working, so far as I know, from the days when locomotives first started to run on the rails in the United States and the United Kingdom down to the modern improvement in the air brake, or whatever it is, has come from private enterprise. Whatever you go into—automatic brakes or block signals, or what not, have practically all come from the private

railways. It does seem that that is rather a significant fact, because nobody can question that the German people have taught the world a great deal. German manufacturers, German merchants, German bankers have really taught the world a great deal, and nobody can doubt that. But as far as I know the German railway official has taught the world nothing. As I stated this morning, the only thing that anybody could suggest to me that was really worth mentioning was the locomotive superheater, and as far as I can make out the inventor of that was not a German but an Austrian, though he was named Schmidt.

We have no experience of State ownership of railways in England. We have a good deal of experience in State ownership of telegraph and telephones. And I think our evidence tends in the same direction in that connection. However, I am not going to trouble you with that at length, because it is rather a side subject. But I would just like to give these instances very briefly.

Fifty years ago the English Government acquired the telegraphs. Three official estimates of the cost of acquisition were put forward. The first was for \$11,679,600, the second was for \$29,199,000, and the third was for \$32,848,875. According to the official figures, the capital account was finally closed with a total expenditure of \$52,887,289. On the basis of the \$29,199,000 capital cost, the post office estimated to obtain an annual net revenue of \$987,900. The fact has been that, on the average of the last 10 years, there has been a loss of more than \$4,866,500 per annum.

That is our record of the telegraphs. They give quite good service, I admit. I do not think anybody will doubt that we get very good service in England, but that is their financial record. They started with an estimate of \$11,000,000; they arrived at an expenditure of \$52,000,000; they estimated their profit as \$1,000,000 per annum, and end with a loss of \$4,500,000 per annum.

The telegraphs were acquired under two act of Parliament in the years 1868 and 1869, which gave the Government a monopoly of the telegraph business. I do not remember the exact form in which it was expressed. This was many years before the telephone was invented.

When the telephone came into existence it was introduced by a private company and gradually began to take hold. The Government did nothing for some time. They then came to the conclusion that it was a dangerous rival to the post office monopoly. They took a case and fought it through every court up to the House of Lords, which is our supreme court of appeal, and in the House of Lords it was decided that the words of the act passed before the telephones were invented did give the Government a monopoly of the telephone business also. Thereupon the Government put on a tax; they left the telephone company in business, but they took from it 10 per cent of its gross receipts, which they added to the profits of the post office, and in various other ways that I will not detain the committee by specifying, they handicapped very much the development of the telephone company. It developed under considerable difficulties, but it did manage to get along fairly, and it did pay a dividend that I think average about 6 per cent until its concession expired in 1911 and the Government took it over. They have already succeeded in reducing

a company with a dividend of 6 per cent per annum to an annual deficit.

Of course, 1911 was only a short time before the war. It is difficult now to secure any statistics. But it is admitted that a system that was working at a profit is now showing an annual loss. Then, I have dealt also with the question of what has happened to electric enterprises in England. The electrical developments in England have been very largely in the hands of municipal corporations, and the municipal corporations already owned their gas works, and they began by fighting electric development on the ground it would injure their gas trade. When it was impossible to stop electricity, they undertook to do it themselves and thereby keep out private enterprises. They obtained acts of Parliament authorizing them to give service in the district, and, having obtained the act of Parliament—of course I am generalizing; I am not attempting to say that every corporation did this, but it was the very common policy—having obtained the act of Parliament authorizing them to supply their district, they did nothing. They had obtained a monopoly of the district and they would not let anybody else in. And that has been the policy almost up to the present day; in fact, it still is the policy.

Big enterprises supplying electricity on a large scale and distributing it from the center, where power could be generated in wholesale quantities cheaply, naturally come in the neighborhood of the large towns, and the large towns, almost without exception, have said, "No; we will not admit this company competition inside the area which has been given to us to serve by Parliament," and the result is the consumer of electricity in England at the present moment is immensely handicapped, because he can not get it in such quantities or at anything like the price he can get it, for instance in Germany or in the United States.

The VICE CHAIRMAN. Did you make clear to the committee, or did you intend to emphasize, the relation between the time of the present war and the time in which the Government sustained those losses on the telegraph and telephone companies and what effect the war had on them?

Mr. ACWORTH. I may say, sir, that I have not got here what year that 10 years went down to, but I think I can safely say that if it includes one year of war that is sure to be all of it; it is an average of 10 years, and it can not include, I feel certain, more than one year of war.

It is impossible that 1916 could have been included, and I very much doubt that 1915 could have been included. Practically all our statistics have disappeared. In fact, there have been no clerks to compile them. Probably the last year of the 10 years was 1914. I can not say for certain. The telephones they took over in 1911, and certainly before the war they had already succeeded in producing a deficit.

I have given other instances. I am afraid all the evidence is that in England, at any rate, public undertakings do not show the same anxiety to develop new traffic or new customers, or whatever it is, as the private enterprises do, and certainly they do show opposition to modern innovations. The municipality wants to protect its gas undertakings against electricity; the State wishes to protect its own

telegraphs against its rival's telephones. That is distinctly the evidence of English experience.

Now, if I might give an instance of that, of the general proposition that the Government official, instead of endeavoring to adapt himself to the public requirements tends to make the public fit what he thinks is desirable.

I think once more Prussia really gives a very good instance. In Prussia, of course, it is exceedingly profitable to the railroad to get all its traffic in carloads if it can, but it is not always convenient to the public to send it in carloads. The Prussian Government practically says to the public, "You shall send in carload quantities; we will fine you so heavily if you do not that we will practically force you." The rate for any ordinary merchandise article is—I will leave out figures; I will merely put it this way—articles that in 10-ton lots pay \$4 per ton, if sent in lots of one or two tons are charged at the rate of \$9 per ton. So you pay two and one-quarter times more if you do not conform to the Prussian official's idea of what suits him and send your things in carload lots.

Now, what happens to the public is this: The difference of rate is so enormous that there has sprung up in Prussia a class of people called *Spediteurs* or forwarders—something like your express company, but not altogether—the forwarder receives from the public the stuff in small quantities, he collects it together until he has a carload, and then he forwards it at the carload rate, and he gives the customer some portion of the difference between the sum that the customer would have to pay if he sent it at the small-package rate and the carload rate. But it works out in this curious way: It is, of course, only in large places that you can make up sufficient parcels to make up a carload, and what happens is this: If you lived at a station 10 miles on the New York side of Washington and you handed your parcel, say, five hundredweight of stuff, to the *Spediteur*, he would send it in to Washington as a parcel, and at Washington he would make up a carload, and suppose you want it delivered at a station in New Jersey a dozen miles this side of New York, he would send it to Jersey City; he would there unload his carload, and he would send your parcel back again the dozen miles once more at the local rate. It is not a system, clearly, that is very convenient to the public, but it is very convenient to the railways.

Here is another instance. In England any ordinary trader has only to say to the company, "I wish to be allowed to open a ledger account." If he is a respectable person there is no question of guaranties or anything of that kind, merely he gets permission to do so. Thereupon all his traffic for a month is entered, and at the end of the month an account is rendered him and he is expected to pay it within the next month, so that he practically gets a six weeks' credit. If he does not pay at the end of the month's grace he is written to, and he can put it off a week or two longer without very much difficulty beyond that.

Here is the Prussian regulation:

In Prussia a shipper can open a monthly account, provided his average freight payments amount to not less than \$75 a month, and provided he deposits with the railway administration cash or securities equal in value to one and one-half times his average monthly account. If in the course of the month his shipments reach the value of the securities deposited, he must either increase his deposit or pay prompt cash for the rest of the month.

It may be said that is because Prussia is Prussia and England is England; but precisely the Prussian regulations are the regulations that the English Government makes when it is dealing with the telephone customer. We pay a measured rate for calls and we have to make a deposit in advance. When I get notice that my deposit is nearly exhausted I must pay up another pound, or £2, or whatever it is, and at the end of that time when the deposit is getting exhausted I must pay up again. I must always keep a balance, and I have known cases where a perfectly respectable householder a few shillings in arrears finds his telephone shut off because he has neglected to send a check. You get exactly the same treatment from the State authority in England on telephones that the State authority gives the public on the railways in Germany.

Now, sir, I suggest that the evidence is very definite. I am sure on this point the evidence runs one way—that the State official is nominally the servant of the public—and you might be entitled to expect on that account that he will treat the Government better than the private person who has to serve his shareholders. I am quite sure the evidence is the other way—that the customer is better treated by the private railroad; is given more liberal terms in many ways than the customer of the State railroad.

Now, you come to the question of the management of the railway itself. The railway management is essentially a commercial business. You want all the commercial qualities of planning ahead and being ready to take up any new technical improvement, and desire to cut down expenses at any point, and things of that kind. And he has to keep his work going. It is quite clear that you do not get as prompt service from public officials. I do not know what it is in this country, but it is a matter of regular knowledge in England that if one writes to a Government department it takes a very long time to get an answer; it takes a week to get an acknowledgment and two or three weeks, often, to get any real answer. If you write to a railroad company you get an acknowledgment by return of post and an answer in two or three days. There is no question as between public service, where you can compare them in England, and private service. There is no question about the commercial alacrity of one as compared to the other.

Then, I think, sirs, we come back—I can not help believing that the evidence is strong in favor of the better service of private enterprises than of public railways; but, coming back, the question is, after all: Are there such abuses in private ownership that State ownership may be the lesser of the two evils? There are one or two points to be dealt with under this head. The first is the great power of private corporations.

There is a famous saying in England that was current for a generation; I think it has mostly died out nowadays, that if the State down not own the railroads, the railroads will own the State. I do not think it ever had much foundation in fact, but nowadays the power of the railroads to stand against the State can not be argued. The railroads have less power in Parliament than a vast number of interests that are certainly very much less important to the public. I used to read in railroad books in this country a great many years ago about the railway barons. I think you have not hereditary rank

in America, and, as far as I know, the railway barons have not left any successors nowadays.

Then there is another thing. Prussia put forward the point that the whole system was honeycombed with rebates. I do not know whether it was true in Prussia; I never saw the evidence for it, but it is quite possible it existed. But it has no connection with private railways as such. I never heard of the suggestion that there had been such a thing as a rebate on the French railways. In England railways began in days before "undue preference" had been ever heard of, and I imagine in the very early days railways gave concessions to their wholesale customers, as the carrier by cart and stage coach had been accustomed to do before, and nobody thought anything about it. But it early was recognized as an abuse, and in 1854 we enacted what is known as the traffic act of 1854, equivalent to your own interstate commerce act of 1887; your interstate commerce act almost reenacted our words, "That no one shall give undue preference or advantage to any person, or any description of traffic." That was enacted in England in 1854, and since then there has been really no suggestion in England that rebates had existed.

I would not say that cases have not been found where the rates at one station were out of proportion to the rates at another station, but anything of the nature of private favoritism is dead, and nobody doubts that it is dead. As long ago as 1882 there was a very searching inquiry into railway conditions in England by a House of Commons committee, and they reported that nobody had given evidence of anything of the kind. Of course your rebates went down very much later in history than ours, but I do not suppose anybody believes they exist to-day in the United States. So I think that point goes.

Then, there had been smaller ways of giving favors. It used to be said in England that a railroad that wanted to encourage an important customer was not too particular in investigating his claims for loss and damage, but 20 years ago we stopped that because we made a joint committee of all the railways concerned to investigate each claim, and that very small leakage has gone altogether, so I think really the points that have been very often made in the literature of the subject, that the railroads exercise undue political power, and that the railroads give unfair advantages to certain customers, certainly have no application to the United Kingdom; certainly have no application to France. The committee know much better than I how far they are applicable to the United States.

Now, if you accept the position that the State is not likely to build cheaper—it will get money a little cheaper, but will spend more of it—if it does not operate cheaper, the argument that it can afford to serve the public better goes. And history entirely justifies this theoretical conclusion. The only State railways in the world that are worth mentioning as seriously profitable are the State railways of Prussia. As I say, that comes from the fact that Prussia bought at the best possible time, in the very serious depression that succeeded the boom after the war of 1870. After the war there was a tremendous boom, followed by great reaction that lasted a number of years, and Prussia bought at exactly that time, and since then has come the wonderful development of Prussian industries, and

so Prussia has been in an exceptionally favorable position, and Prussia does earn 7 per cent on the whole capital.

The railways of South Africa more than pay their way. The railways of western Australia, I believe, do a little more than pay their way, too. I do not think any other country can be pointed to where State railways pay their way. The smaller States of Germany, the rest of the States of Australasia, pay some years and come to the taxpayer for a deficit in other years. Italy, as I mentioned this morning, earns two-fifths of 1 per cent on its railroad capital; Switzerland just about makes both ends meet; Belgium just about makes both ends meet, and so on. It is quite certain nobody could argue for State railways on the ground that wherever they have been put down they are a profitable proposition. The case is very much the other way; that almost in every case where there are State-owned railways they are a burden to the taxpayer.

Of course it is fair to say what may be the natural answer to that, that it is just because they were not likely to pay that the State has been obliged to build them. That may be a perfectly fair argument; in any particular case that may be a perfectly sufficient answer.

The VICE CHAIRMAN. We understand you to say in case of pressure that the cost price is scaled, and they are acquired at a lower price than the cost, which is the reason they succeed in making them profitable?

Mr. ACWORTH. Lower than the original cost of construction?

The VICE CHAIRMAN. Yes.

Mr. ACWORTH. I do not think I could answer that. I never saw it work out as a complete scheme. Bismarck's plan had relation to a certain railway. There were a great many independent private railways. There was a certain railway, the shares stood at a certain price in the market—we will say they stood at 80—and he made an offer of 90 for all the stock, and he got it. Another company stood at 120, and he made an offer of 130, and he got them. It would be almost impossible to compare the total cost to the Government of the total original cost.

The VICE CHAIRMAN. I just wanted to understand—whether the committee did or not—whether you thought that one elemental advantage of the pressure was that they did not construct them but bought them cheaper than they could have been constructed?

Mr. ACWORTH. I do not think any evidence in my possession would entitle me to answer that yes. It may have been so, but I do not know it. The point was, however, that they bought at the bottom of the trough; they bought cheaper a thing that was going to develop to an extent, but nobody then appreciated; I think that is really the answer. I can not say yes or no to the other question.

Well, there is another claim made—I am afraid I am detaining the committee longer than I thought of doing—there is another claim that State management is more equitable. There is no doubt that State management has in some cases built lines in poor districts that private enterprise would not have ventured in. That must be admitted. But the evidence is also that the reason they go in poor districts is not necessarily a public reason. For example, the present management of the Victorian Railways in Australia

insist upon publishing year after year in their annual accounts, as a warning to the legislators in the future, a list of seven branches with an aggregate length of 46 miles that cost about \$2,000,000, at various dates between 1898 and 1904, which were kept open for a good many years during which they failed to earn the operating expenses, and which have subsequently been abandoned and the rails pulled up.

So it is quite true on the one hand that public enterprise does go to districts that perhaps ought to have a railway where private enterprise would not venture, but on the other hand public enterprise goes to a district where neither public nor any other enterprise ought to go on their merits.

Now, may I venture to speak of what is really the most important problem in a democratic State, such as the United States or the United Kingdom?

I said at the outset that Prussia is accepted as the best example of State ownership. I take it that must be admitted. I ventured to say that I do not think the Prussian administration has anything very much to boast of, and I think the comparison that I suggested—not on my own authority, but on the authority of Mr. Colson, one of the greatest authorities in the world on the subject—the comparison that I made between France and Prussia, until it is answered is pretty good evidence that Prussian railways are not efficient as compared with the private railroads in France. But if the Prussian railways were fully as efficient as the most enthusiastic Prussian claims they are I submit that it is no evidence that railways operated by a State constituted as the United States or the United Kingdom, where Parliament controls the management, would be successful.

In Prussia the Prussian King is as much the head of the railways as he is the head of the army, and the Parliament has no more power to interfere in railway management than in the management of the army. That is one thing. A railway managed by a minister who is liable to be cross-questioned in Parliament why he has not given better rates to such and such particular town, why he has not built a railway to such and such particular district, why he does not do this, that, and the other for the benefit of the particular section of the country, is a very different proposition. And this is what happens in every State, as far as I know, with a democratic constitution.

It is commonly said if they can manage the post office why not the railways? I submit that the two are not at all analogous. The post office is a very simple business. You pay 2 cents and you put your letter in the post, and whether it is going to the next village or whether it is going to San Francisco it is 2 cents, and nobody ever discusses the rate.

I think if the post-office rate varied according to zones, and if the post-office rate were not 2 cents, but \$2, or a sum that was worth talking about, you would hear a great deal more about the inequalities of the postal authority, and you would be requested to modify the zones and reduce the rates within the zones, etc.

I do not think the post office is really an analogy. It is very difficult to give evidence about how far the railway management is interfered with by political influence in different countries. It is quite

obvious; I could take any quantity of newspaper stories, but they are not evidence. and I would not like to give the committee anything that I see in newspapers as evidence. But occasionally one comes across evidence that is something better than newspaper talk.

Take, for instance, South Africa. South Africa has investigated conditions a great deal, and these quotations are not from newspapers but from official reports. In 1907 there was a commission on the Cape railways, and they reported unanimously that they were "impressed with the necessity of removing as far as possible the management of the railways from the influence of party politics." Then, that same year, Sir Thomas Price, who had been general manager of the Cape railways and became general manager of the whole of the railways of the South African Union, was asked to report, and here are quotations from his official report:

The drawbacks in the management of the railways in the Cape that call for removal arise from the extent to which and the manner in which the authority of Parliament is exercised. They are twofold in their character, viz:

(1) The practice of public authorities, influential persons, and others bent on securing concessions or other advantages which the general manager has either refused in the conscientious exercise of his functions, or is not likely to grant, making representation to the commissioner (as the ministerial head of the Government), supplemented by such pressure, political influence, or other means as are considered perfectly legitimate in their way and are best calculated to attain the end applicants have in view.

Then he goes on—this is still a quotation:

(Many members of Parliament act similarly in the interests of the districts, constituents, or railway employees in whom they happen to be interested. It is by no means unknown for the requests in both classes of cases to coincide somewhat with a critical division in Parliament—present or in prospect—or otherwise something has occurred which is regarded as irritating to the public or embarrassing to the Government, and the desire to minimize the effect by some conciliatory act is not unnatural.)

I do not regard it as open to doubt that the colony as a whole has suffered in consequence, the inland portions of the colony particularly so; and that the need for a remedy is pressing if the railroads are to be conducted as a business concern for the benefit of the colony.

#### MEANS OF SECURING FREEDOM FROM POLITICAL INFLUENCES.

The necessity for the railways and their administration being removed from such an atmosphere and treated as a most valuable means of benefiting the colony as a whole, while not neglecting the interests of a district (but not subordinating the welfare of the whole colony thereto) is pressing. That there should be an authority to refer to in case of real necessity, where the decision or action of the general manager is not regarded as being in the public interest, is also clear. But it is equally manifest that the commissioner or the Government of the day, with political or party consideration always in view, is not the proper court of reference.

And he ends up—

A material change is imperatively necessary in this respect, if only to insure solvency of the colony.

That was in 1907. In May, 1915, there was a further memorandum by the board of railway commissioners presented in the South African Parliament, in which they say:

Any minister, however, able and strong his character may be, under the system of party government, insensibly susceptible to party considerations and is in constant difficulties in giving impartial decisions. \* \* \* It is perhaps natural that men who have been accustomed to the methods in vogue when the railways were of limited extent should desire still to cling to the old

system of control, but the consequences of doing so can not but be unsatisfactory. \* \* \* As the railways and their working were regarded as part and parcel of the system of party government, with the obvious advantage to the party in power, the reluctance of any government to make a change is what might naturally be expected. Apart from the magnitude of the railways and the number of the railway servants employed, forces have of late years come into prominence that make it increasingly urgent that the railways and harbors should be regarded and administered in the interests of the whole Union and not as an adjunct of the party that is in power.

Now, all of that is official testimony, and I know no other colony which has published things quite as frankly as to the position of affairs.

The VICE CHAIRMAN. Mr. Acworth, a few moments ago you discussed the lack of analogy between railroad ownership by the Government and control and management of the Post Office Department. In this country, perhaps you are aware, it has been officially proposed, as well as generally discussed, to assimilate or coordinate the telegraph and telephone companies with the Post Office Department. Would you care to give the committee the benefit of your ideas as to the feasibility of that, or its desirability—that is, the part of the Post Office Department which conveys news and communications?

Mr. ACWORTH. Well, I do not know whether I ought to hold up England as a melancholy example, which thought it was going to pay \$11,000,000 and had to pay \$50,000,000; which thought they were going to make an annual profit of \$11,000,000, and made an annual loss of \$4,500,000.

The VICE CHAIRMAN. Suppose it was not intended that the Post Office Department should have a profit, but that it was intended for the service of the people. Then would you care to discuss the assimilation of the post office and telegraph and telephone companies with the post-office facilities?

Mr. ACWORTH. Well, our telegraph lines have been in the hands of the public since I was a boy and not old enough to send telegrams. As I say, I think our telegraph service is very good. It is a bad failure financially, but I think its service is very good. I can certainly answer this, that our telephone service was never very good, but it is a great deal worse since the Government took it over. I think that has been, as far as I know, the universal opinion. It is not more cheap. It certainly has got worse, but it is fair to say it was only taken over in 1911, and the Government has been telling us ever since that they have very nearly gone through the reconstruction period and that we are going to live happily ever afterwards.

Then, sir, I think the experience of Australia is very interesting. I may cut it short because practically every colony almost has had the same experience. In every colony, all the time, there have been Government railways; in every colony they were originally treated like any other branch of the Government and were put in charge of a minister, responsible to Parliament. In every colony, except West Australia, which was too young then to have a policy, the people found the result so unsatisfactory that they put the thing into the hands of a commission; they appointed three commissioners who were to manage the railways apart from Parliament, practically independent of the parliamentary control, except so far as construction of new lines, or something of that kind, was concerned, and who were to keep the railways out of politics.

Some commissioners succeeded better than others. But they only held office for five years, and when the five years were coming to an end things tended to drift back into the old rut. Several of the colonies have gone through the experience, first having political management, and finding that that was too unsatisfactory and too expensive, then coming to a commission then finding the commission system not satisfactory for one reason and another and going back to a parliamentary minister. Finding that unsatisfactory and going back to a commission, and so on. Victoria, when I left England, was looking about in its fifth change of policy. It had two periods of ministerial administration, two periods of commission administration, and I was told was now looking out, as a fifth change, for another commissioner. They have felt the great disadvantage of the constant interference that I think the evidence shows is almost unavoidable under a parliamentary system in a democratic country—they have felt that disadvantage, and they have not been able so far to find any method that freed them from it.

Now, Mr. Chairman, I would like to call attention to another matter. It is not only the difficulty between the railroads and the public making demands for special advantages to special districts, but it is also a very great difficulty sometimes between the railroads in public hands and the employees who can bring considerable parliamentary pressure.

In Victoria, in the year 1903, there was a great railway strike. The men demanded extravagant terms. They set the whole public opinion against themselves. They all went out and the citizens of Melbourne rallied to the Government and anybody available kept the railroads open and the men were beaten. Public opinion was so very strong against them that they were entirely beaten. Thereupon the Victoria Parliament passed an act disfranchising every railway servant in his own constituency and constituted a special railway constituency. The railway men were permitted to vote for two members of the lower house and one member of the assembly as their own special representatives, and they had no votes in their own locality.

That lasted for three years and then Parliament repealed that and passed an act, which is still in force in Victoria, the effect of which is this, that if anybody "employed in the public service, either in the railway service, the police service, or the State rivers and water-supply department, shall, either directly or indirectly take any part whatsoever in or in relation to election of members to the legislative council or the legislative assembly, or directly or indirectly in any way take part in the political affairs of the State of Victoria otherwise than by recording a vote at a Parliamentary election," he shall be dismissed, etc.; and "no person or class of persons so employed shall, directly or indirectly, use or attempt to use any influence in respect to any matter affecting the remuneration or position in the public service of either himself or any other person," and the penalty for that is that "such person may be fined in a sum not exceeding £10, and may be reduced in class, subdivision, grade or status, and salary, or he may be dismissed or his services may be dispensed with, provided that such person shall not be dismissed or have his services dispensed with for any contravention of this section without the consent of the governor in council"—that is, the cabinet.

The VICE CHAIRMAN. Now you have given the committee the penalties for strikes—

Mr. ACWORTH. No, sir; not for strikes.

The VICE CHAIRMAN. Some few minutes ago you mentioned strikes. I want to know, if you know and can tell the committee, if there is any other tribunal to decide controversies between the carriers and their men?

Mr. ACWORTH. Anything of the nature of the Interstate Commerce Commission?

The VICE CHAIRMAN. No, sir; any tribunal.

Mr. ACWORTH. I beg your pardon—between the carriers and their men?

The VICE CHAIRMAN. Yes; so as to avoid the necessity for strikes.

Mr. ACWORTH. I could not attempt to give you evidence that would be of any value. I know, of course, that in all the Australian colonies there are all kinds of arbitration boards in the different trades. My recollection is that the common railway plan is that there is an internal arbitration, I think, an officer and a fellow workman of the man complaining, with, I rather think, an independent chairman, but I would not like to commit myself to that. I really do not remember very distinctly. I have a distinct recollection of there being internal tribunals. But these penalties I have been speaking of are not for a strike. In the first place, they are penalties on the railway servant attempting to take any part in politics except by recording his vote in the ballot, and, secondly, on anybody who attempts to use political influence in any way to procure promotion or advantage to anyone in the service.

The VICE CHAIRMAN. But some few moments ago you mentioned that the political rights were taken away.

Mr. ACWORTH. Yes, sir; at that time the railway employees were deprived of their ordinary vote, and instead of it they were given a special railway constituency in which they had a vote. But that was repealed in 1906, and this prohibition against political interference was substituted.

Then I have gone at some length into the story in Belgium. Belgium is rather interesting for this reason: The same political party has been in authority for 32 consecutive years, and it is claimed by the other side that the reason they have succeeded in keeping the power so long is that they have the patronage of the railroads. Certainly their employees have about 6 per cent of the total vote of the country and the ministry certainly have done their best to keep the votes of the employees on their side, and they certainly have remained in power 32 years. Those facts are all clear.

I think I may just give you one story because it is an instance and it is not denied. On the occasion of the election in June, 1912, as the result of orders direct from the cabinet of the minister himself, increases of wages were granted and paid to a large number of men on the very day before the vote was taken, and these increases were made to date back to the previous 1st of January. The minister was accused in Parliament of having ordered these increases by telegraph; he replied that the accusation was not true. He was quite accurate in his statement. The order had been given by telephone.

Now perhaps I may just give this: The committee will remember that there was a good deal said about the Chicago & Alton Railway a few years back. They went back on the books. They extracted from the books instances of expenditures made for capital purpose—that had been charged to revenue. They set them up again in the books and issued capital against them. In 1897, the Belgium ministry went back on the 63 previous budgets, extracted a host of small additions to works and equipment which had been charged to revenue under the category of renewals, making together a total of over \$2,122,472, and charged them back against capital. They went back 63 years in order to produce a result.

Mr. SIMS. And they could not skin the Alton affair even by going back that far.

Mr. ACWORTH. I remember the story of the Alton as a thing that was called a scandal at the time, and I was rather amused when I found that the Belgian Government had gone back not 6 years but 63 years.

The VICE CHAIRMAN. Well, Belgium was a small country and very young at that time.

Mr. ACWORTH. No, sir; it went back 63 years, so it was a pretty old country when it started to go back.

The VICE CHAIRMAN. But the items which were picked up in going back, occurred when the country was young?

Mr. ACWORTH. Oh, yes; of course I do not think it is questioned in either case that when they were younger they might fairly have been charged as revenue; but they had been charged as revenue, and they brought it back. That is the story of both cases.

There is just this about Belgium. It has not, as far as I know, got into the public papers, but it has been mentioned in various directions, and I have reason to know that it is true. Before the war there was a commission sitting on the Belgian railways. That commission had determined to recommend that the construction of new lines should, in future, be intrusted to a contractor and not left in the hands of the railway administration. Further, I do not want to put it too high, but it is as high as this: They were seriously considering the grant of a lease of the State railways to an operating company, and certain very influential persons were in favor of the proposition. Now, Belgium has had its own State railways for more than 70 years; and after 70 years' experience they were seriously considering—and I have been told that they were likely to decide, but I would not care to put it as high as that; but they were certainly seriously considering—the proposition of leasing them to a private company.

I quoted President Hadley at the beginning. That is what Prof. Hadley said 35 years ago; and I submit that the evidence to-day, after 35 years' more experience, confirms that statement of President Hadley in all points—that “the State is more likely to tax industry than to foster it”; that “State management is more costly than private management”; and that “the political danger would be very great”; that “politics would tend to corrupt the railway management, and the railway management would tend to corrupt politics.”

I think the essence of the story is this: In a democratic State, at any rate, you are up against the difficulty that it seems natural that

the Parliament, as the representative of the people, should manage the railways if they belong to the people. If Parliament does manage them, it is almost impossible to prevent private interest obtaining an unfair share of attention. One member may desire, perfectly naturally and properly, to obtain certain things for his constituents. It is nobody's interest to prevent those constituents getting it, but if they get more than a fair share the net result is that the remainder of the public get less than a fair share; and that, it seems to me, is really the evidence from democratic government everywhere—that it is impossible to procure, under any system of State management in a democratic State that has yet existed, an authority that is left to consider impartially, undisturbed by political influences, the interests of the whole public as distinguished from the particular or local interest of certain places or certain trades. I think that is really the sum of the evidence.

If it were possible to establish a system under which the railways were managed for the people, but were not managed by the people in the direct ordinary parliamentary sense, you might get the benefits of State ownership without the advantages. But it seems to me that all the evidence is that in a democratic State the interference with the impartiality of management be in the interest of the whole community, the intrusion of unjustifiable demands on behalf of certain favored individuals or favored localities or favored trade interests has never been prevented.

I must apologize to the committee for having taken so long.

Mr. ADAMSON. Gentlemen, the witness has worked diligently for four hours to-day. Is it the pleasure of the committee to begin the cross-examination now or to postpone that?

Senator ROBINSON. I suggest that be postponed until another occasion, Mr. Chairman.

(Informal discussion with respect to adjournment and the order and manner of examination.)

Mr. ADAMSON. Gentlemen, we will stand adjourned until 8 o'clock to-morrow night.

(Whereupon, at 9.45 o'clock p. m., the joint committee adjourned until to-morrow, Tuesday, May 8, 1917, at 8 o'clock p. m.)



## INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT CONTROL AND REGULATION.

TUESDAY, MAY 8, 1917.

UNITED STATES SENATE,  
JOINT COMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The joint committee met at 8 o'clock p. m., Hon. William C. Adamson (vice chairman) presiding.

The VICE CHAIRMAN. Gentlemen, the committee will come to order. Mr. Hamilton, will you proceed with the witness?

Mr. HAMILTON. I have here, Mr. Acworth, a little book called "The case against railway nationalization," written by Mr. E. A. Pratt, an Englishman. I presume you are familiar with it?

Mr. ACWORTH. I know Mr. Pratt, and I know his books in a general way, sir.

Mr. HAMILTON. He says:

In every instance where the State has built or assisted to build the railways, or has acquired the companies owning railways with a view to their nationalization, such action has been taken as the result of political, financial, or economic conditions which were more or less peculiar to the country concerned and which had no parallel in past or present conditions in the United Kingdom, and offer no recent example that we ourselves should follow.

Now, assuming that that is true as to the United Kingdom, is it true as to the United States, and what would you consider as the chief difficulties in the operation of Government railroads in the United States?

Mr. ACWORTH. That is a very large question.

Mr. HAMILTON. Perhaps I did not realize how large it was, Mr. Acworth.

Mr. ACWORTH. I happened to come to America the same time as Mr. Bryan, I think in 1909, and almost the day I landed he put out a speech, which of course you remember very well, in which he suggested that the National Government should own the trunk lines and the States should own the branch lines. He did not attempt a definition, which I think would have taken him some time in working out, but he seemed to think that was a feasible scheme.

Now, I assume that could not stand criticism; that it is quite obvious that a trunk line with the branches all disconnected is an impossible thing. The tendency of railroads all over the world is consolidation.

The VICE CHAIRMAN. Mr. Bryan had been globe-trotting for a few years and had grown very popular in his absence, and he did that to keep from being elected President the next year. He would have succeeded if he had not acted that way.

Mr. HAMILTON. He succeeded. I must say to you that he recanted that before this committee.

Mr. ACWORTH. Yes; I was only trying to lead up to the point that I assumed that if you did nationalize railways on this continent they would wholly be handed over to the National Government. Well, one knows that of all the Governments in the world, not excluding England, the United States Government has done least in taking charge of public utilities. Our Government has done, of course, very much less than the ordinary continental Government, but our Government has had a certain amount of training. We have, for instance, as was mentioned last night, the telegraph and the telephone, and our municipalities have run gas enterprises and water enterprises and electricity enterprises, and so on, on a considerable scale, and street railways; such public utilities are very generally in public hands. We have had a great deal of experience; you have had practically none; and to begin to learn the job, which I venture to suggest what I have said to the committee yesterday shows is the very difficult job of running railroads, to begin to gain your experience of public authorities managing national enterprises, by taking over an undertaking of 250,000 miles with nearly 2,000,000 employees is a big thing with which to start. That is the first thing that would strike me.

Mr. HAMILTON. Yes; it is fair to assume, too, that the political phases of the management of the road would be as marked here as in any other country, I take it, under our system of government, would they not?

Mr. ACWORTH. Well, sir, a member of the committee last night asked me about telegraphs and telephones, and as the result of that I got the last report of the Postmaster General of the United States and read it this afternoon, and I observed there that he is having what our Postmaster Generals have had for some time, very considerable difficulty with the political influence of his employees. How you would get on with, I suppose, at least a million and a half voters, all employed by the Government, put on you at one fell swoop I do not know. I would not like to be the minister of railroads who was responsible.

Mr. HAMILTON. Some of the difficulties that have manifested themselves prominently in Australia, for illustration, we might anticipate here, I assume?

Mr. ACWORTH. You might. If I might say, sir. Mr. Trumbull mentioned, in introducing me to the committee, that I had just come from Canada. There we had the problem. The Canadian Government has, in the first place, itself constructed and is now operating about three thousand and odd miles of line.

I do not want to say anything unnecessary about Canada, but I do not think the wildest advocate of state ownership has ever produced the Canadian operation or the Canadian experience of construction as an argument for state ownership in any other country.

But the position is this: In Canada they not only have got this of their own, but they have also subsidized—supported to a very large extent—two great systems, the Canadian Northern, of about 10,000 miles, and the Grand Trunk Pacific, which has about 3,500 miles. They have made themselves responsible—partly by directly undertaking to bear the interest, partly by guaranteeing bonds—they have made themselves responsible for three-fourths of the total

bonded indebtedness of the Canadian Northern. They have made themselves responsible for two-thirds of the total bonds of the Grand Trunk Pacific. Now, those two companies are unable to meet their obligations. They had gone ahead too fast, and the question was, what could be done?

There were three of us. One of my colleagues agreed with me and the other did not; but the majority of us agreed that it was impossible, the Government having put its fingers in and having, as so often happens, had the hand and then the whole arm dragged into the machinery, so had gone on advancing and advancing money, we felt there was no way out of it, that you had to recognize the fact that had happened and that it was necessary that the state should take control of these two big private companies.

Of course, I can not say whether the Canadian Government will accept our recommendations or not, but in our recommendations we have done everything in our power to keep political influence out.

If I might, perhaps, say what we have recommended, because my American friends say it is possible you can get that through in Canada, but certainly you could not in the United States. We have recommended that Parliament appoint a board of five trustees; that they manage the railways; that they hold office for life, subject to reappointment after periods of seven years. But our idea is that they would be reappointed as a matter of course, and the people who appoint are not a political authority, but themselves; they recommend to the Government. The five men having been appointed at the outset, if one of them goes out of office by the effluxion of time, the remaining four recommend to the Government either that this gentleman be reappointed or that a new person be appointed in his place, and if the Government accepts our recommendation and puts this into the act of Parliament the Government can do nothing but either accept the nomination or refuse it. If the Government refuses it, it goes back to the trustees, and the trustees nominate another person, and the Government can only accept him or refuse him. Under our scheme the Government would have as little control over the direct management of the railroads as it is possible to plan.

We have deliberately made these trustees self-perpetuating and a permanent body because we felt that the political management had done much harm to Canada in the past and was likely to do much harm to Canada in the future. I can not, of course, say what will be done with our report. It was only published two or three days ago, and I have only seen one or two Canadian newspaper criticisms. But I was told by people who were likely to be good representatives of Canadian opinion that the people were so shocked at what had happened under political management in Canada that they were likely to accept this very drastic proposal for telling Parliament it should not manage a business of that importance to the country rather than risk further parliamentary management as it had been in the past.

MR. HAMILTON. In that connection will you sketch briefly some of the difficulties which have resulted in Canada?

MR. ACWORTH. You mean the kind of things that have happened?

MR. HAMILTON. Yes; just briefly. I do not want to take too much of your time.

MR. ACWORTH. Let me give you this: The last instance of Canadian building—the Canadian Government built the National Conti-

mental Railway. It never ought to have been built. There clearly was no need for it, and there is no traffic for it.

Mr. HAMILTON. That, on a large scale, is an illustration of political management, is it not?

Mr. ACWORTH. They started to build it on an estimate, I think, of \$35,000 a mile—something like that. The estimate was made in a manner that I do not hesitate to say you or I would never accept from an architect if we were going to build a thousand-dollar bungalow. The man who made the estimate went, and looked at the line and said, "There are so many miles, and I think it ought to cost so much, and he multiplied the miles by the dollars, and they started off and built 2,000 miles on that estimate, and the estimate was something like \$30,000 a mile and the fact was \$90,000 some odd a mile.

I will give you one other thing. I am not betraying any confidence, because it was in all the newspapers when I was in Canada. There is an old line, the Intercolonial. It has a very fair traffic; it earns about \$11,000 a mile per annum; it certainly has low rates. But the low rates are certainly not sufficient to account for the fact that over a series of 30 years it has cost to operate more than its gross receipts, and that is not the whole story, because in the course of those 30 years the capital per mile was put up from, I think it was, \$37,000 to \$57,000 a mile, and it was not a railway with any great growing traffic which needed large new capital expenditure. The increase of the capital cost per mile was mainly, I have no hesitation in saying, due to the fact that year after year they charged to capital renewals that ought to have been charged into the current expenses. Now, that is the railway.

In the last few years there is a new minister, who has insisted that the railway should be managed as a railroad. The Montreal Gazette, I remember, said some years ago it was not a railway but an opera bouffe, and he insisted it should be managed properly, and things have very much improved. Last year, with the additional traffic owing to war, they actually earned a dividend of 2 per cent after paying for their renewals honestly. Such a thing never had occurred, and they are quite surprised in that district.

Where I was in Canada there appeared a letter in the newspapers from a gentleman who was a member of Parliament from one of the districts served by the railroad, and he wrote that he was resigning his seat in Parliament—but he was rather a prominent supporter of the Government—and he publicly gave as his reason for resigning that the minister of railroads and the general manager had thought fit to appoint the person whom they thought qualified to be district superintendent rather than the person that he recommended. He said that openly. That was how he considered the railroads ought to be managed; that he should name the district superintendent, because he was the member for that district.

Mr. HAMILTON. When I have consumed 30 minutes, Mr. Chairman, I want to stop, and wish you would call my attention to it.

The VICE CHAIRMAN. We can not prevent you stopping, if you wish, Mr. Hamilton, but the Chair is not going to stop you. I hope you will not embarrass yourself about time. This is a very interesting examination.

Mr. HAMILTON. Referring now to the Prussian State railway as the most successful example of Government ownership, will you

briefly state the causes which have contributed to this alleged success of the Prussian railways? First, the flat country, I presume, and the haul, I take it, and the easy movement of freight, have contributed to its success?

Mr. ACWORTH. I think you may put it this way, sir: You start with a low capitalization, owing to the fact that the railways were bought under very favorable circumstances and that it could not have been expensive to build them in a dead flat country. That is number one. For the same reason you have cheap operation, you can run large trains with light power, and so forth.

Mr. HAMILTON. Therefore your earning power is greater?

Mr. ACWORTH. Your earning power is great; your operating costs are low. You have rates that were fixed when the traffic was very much smaller in volume that have been maintained practically unreduced, and therefore that leaves a very large margin of profit. You have a Government that is able to insist on its own point of view. I instanced, for example, yesterday, that they make penal rates. Every railway man knows that dealing with what you call less than carload freight is immensely more expensive than dealing with carload freight. The railway men have long believed in England that the rates charged for less than carload freight are too low; they do not pay. One of the presidents of one of your big railways told me recently, "If I could get rid of every scrap of less than carload freight I carry and give it to my neighbors, I would be a rich man." The Prussian has practically penalized less than carload freight out of existence.

I will give you another instance. A carload is supposed to be 10 tons. If you have 11 tons you may fill your carload and pay the carload rate, and on the odd 1 ton you have got to pay the very much higher less-than-carload rate. That is a sample of how they protect themselves. They protect themselves almost absolutely against loss and damage. If any consignment that you send is packed otherwise than in a safe, almost, they give you notice, "insufficiently packed, and therefore carried at consignor's risk." If the traffic is delayed on American or French or English railroads, you are required to pay damages if you have not delivered in a reasonable time. On the Prussian railway they very carefully protect themselves. As you know, in every continental country there is a fixed period, the legal time for delivery. The regular time for delivery in France begins from the start the consignor says "Please carry my goods." It begins in Germany from the time when the Prussian railways say, "We have got a car and we are now ready to carry your goods." Well, on that basis it is almost difficult to find an opportunity for not getting the goods on time, and so on. In every way the Prussian State railways protect their revenues. Of course, Prussia, or rather Germany, had great difficulty before the war in raising by taxes the very large revenue they required, and they have clung with extraordinary care to the surplus revenue that they get from their railways. The Prussian State, as distinguished from the Empire, does not spend very much money; and they get about \$50,000,000 to \$60,000,000 per annum net revenue from the railway after covering all the expenses and interest on the railway capital. They get that toward the general purposes of the Government and they have held on to that.

Mr HAMILTON. Then there is another element I have read, and that is the very large international or transit business, going across Prussia, going through Germany. I do not know how much there is to that.

Mr. ACWORTH. I do not think it would be a large element in the situation, sir. It may be considerable, but these international hauls are generally done at very low competitive rates, because the route through Germany is competitive with the route through Switzerland, or it has to compete with the water-borne traffic. I have no doubt it amounts to considerable gross money, but I do not think very much net.

Mr. HAMILTON. I have read that did enter into the profitableness of the business.

Mr. ACWORTH. I should not have thought it was a large factor.

Mr. HAMILTON. Then, too, there is the administrative skill, I suppose, the autocratic management of the system?

Mr. ACWORTH. At least it is safe to say money is not wasted owing to the political influence of the employees. [Laughter.]

Mr. HAMILTON. Exactly. Now, as to financial results, I have read that there is quite a marked difference between the Prussian railroads, and I think there is one large extension, the Prussia-Hesse?

Mr. ACWORTH. Not exactly an extension. It was really Prussia that nationalized its own railroads. Hesse also had State railways, and 15 or 20 years ago the State of Hesse made a bargain and put its railroads together with Prussia, and, therefore, strictly speaking, now what we commonly call the Prussian railways are the Prussia-Hesse railways.

Mr. HAMILTON. And the other States declined to join?

Mr. ACWORTH. Yes.

Mr. HAMILTON. Fearing they would lose their commercial individuality?

Mr. ACWORTH. Yes; and also their seminational individuality.

Mr. HAMILTON. And they have not succeeded financially anywhere nearly as well as the Prussian road?

Mr. ACWORTH. Oh, no. Saxony, I think, and Baden—Saxony comes out about even; that is to say, its net money is enough to cover its debt. Baden, I think, is a little worse off. Bavaria, one year with another, I think is a little below paying its debt. Wurtemberg, which is the other important one, loses. Wurtemberg is largely not a manufacturing State, and it is not unnatural its railways are less profitable. But you may certainly take it that outside of Prussia the State railways are not a profitable investment.

Mr. HAMILTON. Here is a statement that caught my attention. It is an article contributed by Hermann Schumacher in the Royal Economic Society Congress in London, January, 1912.

Mr. ACWORTH. That is the paper from which I quoted, sir, where he praised the Prussian system.

M. HAMILTON. Now, in that he says: "To-day"—that, is, speaking of these States outside of Prussia—"they are face to face" (and that was said in 1912) "with the unpleasant alternative of either joining the great Prussian railway system and partly abandoning their independence or of continuing to pay for their independence by working at a loss."

Is that practically the condition, or was it that at the time of the war?

Mr. ACWORTH. Of course, Prof. Schumacher is no doubt much more familiar with the details than I am. In that case I have put it too high. The small States come out worse on their railways than I said.

Mr. HAMILTON. I did not mean to controvert his statement, but I had in mind the inquiry as to whether conditions as he described them in 1912 had continued, barring the abnormal conditions which have prevailed since the war began.

Mr. ACWORTH. I should have said I do not know that I should have used quite as strong words as Prof. Schumacher, but no doubt he is right and I am not right. He must be more familiar with the subject than I am. He implies that, taking them altogether, they make a considerable deficit, and his point is that it would pay them to come into the Prussian organization. Well, of course, we have discovered since 1912 more clearly than we did before that the Prussians consider it a greater privilege to be a Prussian than other people do, and Prof. Schumacher thinks pecuniary gain is worth purchasing at the price of the surrender of their independence. They do not. Of course, it is clear that there would be more profit to be made if they did throw themselves in, because some of them crisscross—not Bavaria, Wurtemberg, and Baden, which are all down in the south more or less together, but some of the States—for instance, Saxony and Mecklenburg, and so on—do crisscross with the Prussian railways, and unquestionably it would be economical to take them in.

Mr. HAMILTON. Mr. Chairman, I do not think I will ask any more questions now.

The VICE CHAIRMAN. If you think you have finished there is nobody at the other end of the table, and we shall pass to Mr. Esch.

Mr. ESCH. Mr. Acworth has covered the subject very fully, indeed, heretofore, and there are just a few matters I want to inquire of him about. I do not feel I ought to take the time of the committee by going beyond what seems to me to be important.

The VICE CHAIRMAN. I assume that this witness knows a great deal more besides Government ownership. If any of you gentlemen feel inquisitive on any other subject, the Chair would suggest that you inquire of him. Mr. Esch, you may proceed.

Mr. ESCH. I understood you to say that you had recently been a member of a board to investigate the Canadian lines?

Mr. ACWORTH. Yes, sir.

Mr. ESCH. And that that board had just made its report?

Mr. ACWORTH. Yes, sir.

Mr. ESCH. Does that report deal in any measure with reference to the ownership of the Government lines in Canada?

Mr. ACWORTH. Yes, sir.

Mr. ESCH. Would that information be of service to us in the consideration of this question.

Mr. ACWORTH. Yes. I think I ought to have said it when I was speaking about it. We have recommended that these three thousand odd miles at present being operated directly by the State under the control of a minister, a member of the cabinet, should be taken away

from that management and handed over to the trustees, whom our report describes as a nonpolitical, self-perpetuating body, as independent as it is possible to make them.

Mr. ESCH. Then, in arriving at that conclusion you probably in your report give the reasons for coming to that conclusion?

Mr. ACWORTH. Yes, sir.

Mr. ESCH. Therefore, those reasons may be of value to us in determining our position in reference to Government ownership.

Mr. ACWORTH. We did give, for example, what I mentioned just now. We did call attention to the inexplicable expenditure in connection with the operation of the intercolonial system, which is the one that they have had 40 years' experience of.

Mr. ESCH. Will this be an elaborate report?

Mr. ACWORTH [exhibiting pamphlet].

Mr. ESCH. I wonder, Mr. Chairman, if that might be included in the record.

Mr. ACWORTH. I hope it will be sent, as a matter of course, to your library.

Mr. ESCH. Might it not be printed as a part of these hearings?

Mr. ACWORTH. I do not think you would desire to include the complete work; but this contains the report of the two commissioners who agreed, the report of Mr. Smith, the president of the New York Central, who disagreed with us, and two long appendices.

The VICE CHAIRMAN. How many pages does the book contain?

Mr. ESCH. This commission will not be able to travel in Europe to make personal investigation of Government ownership.

Mr. ACWORTH. I hope you will before long.

Mr. ESCH. So we shall have to get the best information we can.

Mr. ACWORTH. It is just about 100 pages of the report proper, of which I regret to say that my colleague and I occupied 83 pages and Mr. Smith only occupied less than 20 pages.

The VICE CHAIRMAN. Inasmuch as travel in Europe at the present time might be a little inconvenient, perhaps we had better avail ourselves of documentary evidence.

Mr. ACWORTH. May I say that I trust you will postpone the decision in favor of State ownership until you have the opportunity to travel? [Laughter.]

Mr. ADAMSON. As far as I am concerned, I will have no difficulty in granting your request.

Mr. ESCH. Does this report cover the Prince Edward Island Railway?

Mr. ACWORTH. It just mentions it.

Mr. ESCH. That is a Government line.

Mr. ACWORTH. I am afraid my knowledge of the Prince Edward Island Railway is only from statistics, which show that it is operated at an annual loss of a quarter of a million dollars and that it is about 270 miles long; but I have never seen it.

Mr. ESCH. I think we ought to have that report printed as part of our hearings, Mr. Chairman.

Mr. ADAMSON. If there is no objection, the Chair will so order.

Mr. HAMILTON. Suppose we ask Mr. Acworth to leave a copy of the report with us, and then we can consider whether we can not economize space?

Mr. ESCH. That might enable us to eliminate part of it.

Mr. HAMILTON. Yes; there might be part we will not need.

Mr. ADAMSON. You have no objection to our editing it and selecting such parts as we may wish to conscript?

Mr. ACWORTH. Certainly not. It is a public document. It is addressed to Canada, but it has great interest to England because the bulk of the money is found in London, and for the last two or three years a good deal of short-term money has been borrowed by the Canadian Railways in New York.

Mr. ADAMSON. Will you oblige the committee with that book?

Mr. ACWORTH. Certainly, sir.

Mr. ESCH. In view of the importance of your testimony of last night with reference to the Prussian or German lines, I would like to make some further inquiries. As I understood it, you said that the Prussian system was managed distinct and apart from the Empire's systems?

Mr. ACWORTH. That is to say, the railways that belong to the Empire are the railways that were French until 1870—that were in the territory of Alsace-Lorraine, ceded by France to the Empire. The Germans took them over, and as, of course, they were conquered by the German Empire, and not by any special State, they have remained the property of the State. For all practical purposes, they are administered by Prussia.

Mr. HAMILTON. There are about 1,300 miles of line, are there not? Am I mistaken as to the length of it?

Mr. ACWORTH. I am afraid I have not the figure in my head, sir. I should have thought it was more than that; but they are very important, because of the coal mines and the iron mines in the Saarbrück district.

Mr. ESCH. Then they also have control of the lines in Hesse?

Mr. ACWORTH. Hesse had its own separate system and Prussia had its own separate system. I should think it was about 1900, speaking from memory, that the people of Hesse came to the conclusion that it was not good business to keep their small system separate, and they amalgamated, and it is now the Prussian-Hesse system.

Mr. ESCH. Has not Prussia some interest in the lines in Saxe-Weimer and Saxe-Meiningen?

Mr. ACWORTH. I think those little States—they are too small to amount to anything of importance—are included in the Prussian railway system.

Mr. ESCH. Does not the imperial control extend over the States, to a certain degree?

Mr. ACWORTH. There was set up under the German constitution an imperial railway office, and it was expected to be of very great importance; and if you look at the paper constitution of it, it looks to have important functions. I gather from discussing it with people who know its actual working that as a matter of practical politics it has not really very much power; that it nominally controls tariffs, it nominally controls regulations as to signaling and as to interchange of traffic and everything of that kind; but, practically, I understand it sits there and compiles statistics, and does not do very much more; but if it were necessary to unify the regulations

and the tariffs of the German States, it would have power to do it. It would have a theoretical power, certainly, whether it would have a practical power or not. As it works out in practice Prussia dominates the situation.

Mr. ESCH. Is that done through the nation council? Is that what they call that body?

Mr. ACWORTH. Oh, no, sir; the national council is quite different. The imperial railway office has an official director, etc., and is an official bureau. Prussia has—and other smaller States have in some cases, too—a national council, which consists of representatives from the ministry of agriculture, and the ministry of war, and the ministry of commerce, and the ministry of lands and mines, and the ministry of railways, and chambers of commerce, and chambers of mines, and chambers of agriculture, and probably representatives of the municipality of Berlin and some other big municipalities—something like 100 members in all—and it meets and discusses—it has no powers whatever—any questions of alterations in the general regulations. Take a question that is always up here, of demurrage; let us say that it is proposed to alter the rules about demurrage or it is proposed to alter the size of the minimum carload—questions of that kind, which are proposed either by the railways or by the traders, and a question of that kind is put on the docket of the council and is discussed. The council has no authority whatever to give any orders. It is merely a consultative body, but its opinions have very great weight. I have urged for years in England that we should adopt the same thing. I read not very long ago an article by Mr. Meyer, of the Interstate-Commerce Commission, urging that it be introduced here. We have recommended that it be introduced in Canada. I believe it is an admirable system.

Mr. ESCH. It brings to the attention of the administrative body the wishes of the people themselves?

Mr. ACWORTH. Yes; and it does another thing, which is almost as important. It makes the railway people and the shippers know each other, it gives the customer who does not understand railway operation an opportunity of learning that what he thinks is a simple thing to be done is not easy for the railway companies to do. I think it has good influence both ways. It helps the railway companies; it makes them do things they might otherwise object to doing, but it also makes the shippers understand why they can not get all they want. I believe it is most valuable.

Mr. ESCH. How does that differ from the committee on railway management? They have another organization or body—a committee on railway management. Now, that may have only reference to the relations of Germany to outside States.

Mr. ACWORTH. It is a little difficult, of course—the technical terms—but I presume, sir, what you are referring to is the Union of German Railway Administration, a body of the nature of your railway association here, which is purely of railway men, technical men who discuss technical questions, who lay down the dimensions of a coupler, that it must be of a certain weight and have a certain size of jaw, and that it must pull back with a rod of a certain length, and things of that kind; purely a technical body.

Mr. ESCH. Does not that body have a tendency, then, to bring about uniformity and standards throughout the Empire?

Mr. ACWORTH. Oh, yes; they have done most admirably, and not only have they established the German standard in Germany but it extends into Austria, into Luxemburg, and, I think, into Holland and Belgium and into Switzerland. It extends far beyond the German Empire, and not only has it been very useful from a practical point of view, but I have no doubt that it has been one of the things that has helped Germany to extend her trade outside of her frontiers.

Mr. ESCH. So you think both those organizations tend toward higher efficiency?

Mr. ACWORTH. Yes; I think they are both admirable and very useful.

Mr. ESCH. Now, with reference to the matter of Prussian rates, is it not a fact that the bulk freight in Germany goes by river or canal?

Mr. ACWORTH. It is curious, when you come to look at the figures. One always speaks of it as "rivers and canals," but the fact is—I think I should not be wrong if I said that more than half of the whole is on the Rhine—a good deal more than half of the whole is actually on the Rhine, and perhaps a quarter of the rest of it is on the Elbe, and the canals are quite a small proportion of the whole; when you put them together they are very much smaller than the railway traffic, but they bear a very much bigger proportion to the railway traffic than in the United States or in the United Kingdom.

Mr. ESCH. It is one-quarter, I understand—

Mr. ACWORTH. In Germany?

Mr. ESCH. Yes.

Mr. ACWORTH. I would not like to give the figure offhand.

Mr. ESCH. That was the figure given by Dr. Johnson in his work on "Railway Transportation," just published.

Mr. ACWORTH. If I had known that you were likely to ask me that, I would have looked it up.

Mr. ESCH. The point I am getting at is that, assuming that Dr. Johnson is right in his statement that one-quarter of the freight in the German Empire goes by water, that would mean that the high-priced freight—what we call in this country "class freight"—would go by rail?

Mr. ACWORTH. That is true.

Mr. ESCH. And that would have a tendency of raising the average per ton-mile cost in Germany as compared with the United States or any other country?

Mr. ACWORTH. Yes; somewhat, but not very much, if you remember that it is all in carload lots and that the consignor has to load and unload it. It does not cost much more to haul a carload of cotton cloth than it does to haul a carload of coal. Of course, coal gives better loading, but the large part of the expense of merchandise traffic is the handling. Now, they get rid of that because it is all carload stuff, and the consignor and consignee deal with it. But may I just say this about the water traffic, because this is a condition of things that is peculiar to Germany: Largely, it is always understood, from the personal interference of the Kaiser himself, the water traffic is encouraged, and what happens is this: Traffic arises, we will say, 30 miles from the Rhine. Supposing it is traffic rising in the east of Prussia, somewhere near the Elbe; it is carried by rail to the Elbe—this happens on grain to a large extent—and it goes down the Elbe,

and comes right around the North Sea, and comes up the Rhine, and then, if it is wanted 50 miles inland, it is again put on a train and taken to its destination. So you will observe, if you take the case of a ton of grain, under those conditions it would appear in the statistics as 2 tons of grain carried by rail and 1 ton of grain carried by water, and yet it is the same ton. So, as I say, the statistics are curious.

Mr. ESCH. But it is true, as you say, that the German Government encourages its water traffic?

Mr. ACWORTH. Yes.

Mr. ESCH. And does not permit the railroads to fix such a rate as would destroy the river traffic?

Mr. ACWORTH. Yes; that is to say, it does not itself make any such a rate.

Mr. ESCH. In France they do the same thing, do they not, to protect their water traffic?

Mr. ACWORTH. In France they protect the water traffic by not allowing a railway rate to be reduced to more than 20 per cent above the water rate. There is a sort of standard difference between the rates of 20 per cent higher for rail.

Mr. ESCH. That being the case, and the railroads only carrying the higher class freight—

Mr. ACWORTH. No, sir; with respect, that is not the case. I mean to say that if you will look at the traffic you will find, as in every country, that the very large proportion of the total rail traffic is coal and iron.

Mr. ESCH. And that goes by water very largely?

Mr. ACWORTH. Very largely; but also by rail very largely. I mean to say that if you take an analysis of the total tonnage of the Prussian railways, and say it is 500,000,000 tons a year, or something of that kind, you will find that 200,000,000 tons to start with is coal and another 100,000,000 is iron and sand and bricks and things of that kind. It would be quite wrong to think that the Prussian rate, of which I gave the average yesterday at roughly double the American rate—I say it would be quite wrong to think that that is mainly on high-class traffic. I think you will find it is on traffic distributed in very much the same proportions as it is distributed here.

Mr. ESCH. But in the German system they do not have express companies and express packages hauled by distinct companies, but that goes as freight, does it not?

Mr. ACWORTH. They have a system by which it is all done by the railway itself. They have a system of what they call "express goods," for which the rate is double the rate on the highest class traffic by ordinary freight; and they also have what they call "courier freight," which is still better, and that is charged four times the first-class freight rate.

Mr. ESCH. But that goes in to raise the average?

Mr. ACWORTH. No, sir.

Mr. ESCH. It does not?

Mr. ACWORTH. No, sir; the rates I have given are the rates not including express goods. These are the rates for ordinary freight.

Mr. ESCH. Germany, to encourage her foreign commerce, has what she calls "exceptional tariff," has she not?

Mr. ACWORTH. Oh, yes.

Mr. ESCH. Will you explain the operation of the exceptional tariffs as administered by the German railway system?

Mr. ACWORTH. I am afraid, sir, that that is beyond me. They have a very complicated tariff. They have, first of all, a rate for small consignments—and a “small consignment” means anything under 5 tons—small consignments of goods not specially mentioned. Secondly, they have a rate—that is the rate which I mentioned yesterday, and called it 9. Secondly, they have a rate for goods “not specially classified,” carried in 5-ton lots, and that rate would be about 6. Thirdly, they have a rate for goods not specially classified, carried in 10-ton lots, and that would be the rate that I called 4. Then, next, they have another three sets of rates for goods “specially classified,” lower than the first set, that go either in small consignments, or in 5-ton lots or in 10-ton lots. Then, beyond that, they have three which they call “exceptional classes.” The exceptional class No. 1, we will say, would be grain; exceptional class No. 2 would be, say, pig iron; and exceptional class No. 3 would be coal and sand and manure. So that they have a great many classes.

Mr. ESCH. Yes; but those are hauled at a very low rate?

Mr. ACWORTH. It works out in this way, as I quoted from Prof. Schumacher, down to a rate about as low as 0.35 of a cent—I gave the figure yesterday. That he gives as an exceptionally low rate for bulk freight. He says, “In the case of goods sent in bulk, the freight for long distances is as low as 0.35 of a cent per ton-mile.”

Mr. ESCH. Why are such exceptionally low rates given to exports and imports? Do you think it is due to the agrarian movement generally?

Mr. ACWORTH. They never give a low rate to imports. On the contrary.

Mr. ESCH. Exports?

Mr. ACWORTH. Exports; yes. They have done that as a deliberate attempt to capture the foreign markets. They have kept that very quiet, but there are two well-known tariffs—one the “Levant tariff,” and the other the “East African tariff,” and it is always understood that a manufacturer, in Saxony for instance, wanting to ship goods, in competition with other countries, to Asia Minor, is given such a rate—or it may be no rate at all—from his factory to Hamburg as enables him to compete with the same goods coming from Liverpool or from New York; but the Prussian Government keeps that very quiet. However, it is quite understood that it deliberately makes a rate that renders it possible for the German trader to compete without being handicapped by his geographical situation.

Mr. ESCH. That would result in a species of discrimination, would it not?

Mr. ACWORTH. A startling discrimination, one would say; but it is, of course, part of the whole Prussian system of protection.

Mr. ESCH. Yes. You spoke last night of the small capacity of their wagon or freight wagons. Is not that due, in part, to their agreement with adjoining nations that they shall have not more than 3,100 pounds, I think, for axle load? Do they not have some agreement of that kind?

Mr. ACWORTH. I should, myself, have thought it was due more to the fact that a State undertaking is never ready to spend money on improvements, and that they did not want to build bridges that

would carry the heavier loads. Of course the proportion of traffic that goes to foreign countries is very small; the great haul of traffic must always be, for example, coal from the mines of the iron works, and things of that kind, and I do not know of any reason why they should not use 50-ton, 70-ton, or 90-ton cars, as they do in America, except that they would have to modernize their roads.

Mr. ESCH. You gave us one reason why they did not, and why the freight traffic in Germany was not at its highest point of efficiency—the fact that the Government sought a revenue out of its roads.

Mr. ACWORTH. Well, sir, I do not want to say anything unkind about Governments, but it does seem to me that all Government enterprises seek a revenue not by launching out boldly and getting a fine return but by “cheeseparing” and cutting down the expenses. They try to raise their profit by cutting down the expenses and not by improving their gross receipts. It seems to me that applies to Government enterprises everywhere, certainly in Europe.

Mr. ESCH. And that would be one argument against Government ownership, in your opinion?

Mr. ACWORTH. To me it is a very strong argument. All history tends that way.

Mr. ESCH. You say they turn into the treasury \$50,000,000 to \$60,000,000 a year?

Mr. ACWORTH. Yes; and it has gone as high as a hundred million; it varies from year to year.

Mr. ESCH. But I think the German States do not tax their railroads?

Mr. ACWORTH. They pay some taxes.

Mr. ESCH. It is comparatively nominal?

Mr. ACWORTH. Yes.

Mr. ESCH. So when you talk about putting so much into the treasury, we ought to remember, at the same time, that they are not being taxed by the Government?

Mr. ACWORTH. Yes, sir; that is perfectly true. I put it in there, but I forgot to mention it last night. Of course it is a very important point.

Mr. HAMILTON. Is it true that the Prussian railroads are not taxed?

Mr. ACWORTH. Yes; they pay some nominal charges.

Mr. HAMILTON. The Belgian roads are not taxed, but I had the idea that the Prussian roads were taxed.

Mr. ACWORTH. My recollection is that they have to pay something like one-half of 1 per cent of their gross revenue; something very small.

Mr. ESCH. If the 25,000 miles of State roads had to pay a tax like other property there would not be much money to put into the treasury, would there?

Mr. ACWORTH. Well, I could not say. One would have to know what the rate of the tax would be before it would take that up.

Mr. ESCH. But we have got to bear that in mind?

Mr. ACWORTH. Oh, yes. Unquestionably, if they had taxation on the American scale, of so many dollars a mile—say, \$250 a mile or something of that kind—

Mr. ESCH. The taxes on the railroads of the United States last year were, I think, about \$150,000,000, and it is a very considerable

item, and one against which the railroads are making much complaint, because of the rapid rate of increase in their taxation in the last 10 years.

Mr. HAMILTON. Just a question has occurred to me in this connection, and, with Mr. Esch's permission, I will submit it to you.

Mr. ESCH. Yes; go ahead, sir.

Mr. HAMILTON. As I understand, it has been the custom in Prussia—I do not know whether it is still the custom—for municipalities to construct the railroad stations, and not require the railroads to construct those stations, so that a considerable expense was, for a long time at least, saved to the railroads in that respect. Is that true?

Mr. ACWORTH. I do not think they construct, sir. Of course, the State and the municipalities work exceedingly closely together. Here is what has happened in one or two instances. I dare say that the members of the committee know the great station at Frankfort. Now, they moved the Frankfort station. The town, of course, had grown a great deal, and they moved the station from a very valuable site and sold that site, and they built an enormously larger and more elaborate station on a considerably cheaper site; and I have no question that there was a bargain in the whole undertaking between the Government and the State and the city; but the Government certainly built the station. How much the town contributed and in what form I could not say.

Mr. HAMILTON. I understood that the Government ran the railway, but that for a long time at least the municipality constructed the stations, and that there was a sort of rivalry among them, as to the beauty and the character of the stations and things of that sort.

Mr. ACWORTH. That is not within my knowledge, sir.

Mr. ESCH. My half hour is exhausted, but I want to ask you one question. What, in your opinion, would be the virtue of this plan: That the Government would guarantee interest and dividends on a fair valuation, plus a reasonable surplus, dividing with the Government what should be earned beyond that amount?

Mr. ACWORTH. Are you putting that as a generality?

Mr. ESCH. A hypothetical question.

Mr. ACWORTH. As a general scheme?

Mr. ESCH. Yes.

Mr. ACWORTH. A scheme that might be applicable to a whole country's railways?

Mr. ESCH. Yes.

Mr. ACWORTH. Guaranteed, we will say, 5 per cent and dividing beyond 5 per cent?

Mr. ESCH. Yes.

Mr. ACWORTH. Well, from the point of view of a shareholder, assuming that he agrees with the valuer as to what the fair valuation is—which, perhaps, is a somewhat large assumption—

Mr. ESCH. Of course, we are trying to make a fair valuation here.

Mr. ACWORTH. Yes. Assuming that the shareholder accepts the valuation as fair, that he is offered a guaranteed per cent and a percentage of the division of the rates, it seems to me that the shareholder in the ordinary railroad has reason to think he is quite well treated; but it occurs to one whether a shareholder in the Lackawanna Railroad would be grateful for that treatment.

Mr. ESCH. He might think he could do better?

Mr. ACWORTH. Yes; that he could do better for himself.

Mr. ESCH. That suggestion was not broached in the course of the hearings thus far, and I thought I would get your views on it. My time is exhausted.

Mr. ACWORTH. I was only answering from a financial point of view.

Mr. ESCH. Well, what would you say to it as a governmental policy?

Mr. ACWORTH. It is quite clear that the Government is not going to take all that responsibility without taking some control in return. You must assume that.

Mr. ESCH. That is assumed.

Mr. ACWORTH. Of course, if you ask me my opinion——

Mr. ESCH. Yes.

Mr. ACWORTH. My opinion would be that it would depend on the form in which the Government took the control. If the Government took the control in a form which led the railways to get into politics, I should say it would be a disaster to the country. If the Government took the control in the form of—what shall I say—of a financial board of experts or something of that kind, who were entirely independent of politics and who did not have to seek election or anything of that kind, it might be a good scheme.

Mr. ESCH. Let us assume control such as we have in the Interstate Commerce Commission now.

Mr. ACWORTH. Well, I like our Canadian scheme, where they reelect each other, much better than yours, sir, I will say frankly; but we have not got ours yet.

Mr. ESCH. My time is exhausted, Mr. Chairman.

The VICE CHAIRMAN. Have you imposed a self-limitation on yourself, Mr. Esch?

Mr. ESCH. Yes, sir.

The VICE CHAIRMAN. Senator Robinson, you may examine the witness now. Before Senator Robinson proceeds, however, I will have to go away, and must ask to be excused; and I want to ask if, after Senator Robinson and Judge Sims have concluded their examination, we can not reconvene in the morning at half past 10, and permit those Senators who are not present to-night to examine Mr. Acworth?

Mr. ACWORTH. I am at your service.

The VICE CHAIRMAN. What do you say, gentlemen?

Senator ROBINSON. I am agreeable.

The VICE CHAIRMAN. Will you proceed now, Senator?

Senator ROBINSON. Yes.

The VICE CHAIRMAN. You and Judge Sims try to get through to-night, and then we will meet in the morning at 10.30.

Senator ROBINSON. Then you had better make it 10 o'clock, if you want to accomplish anything in the morning, because the Senate meets at 11.

The VICE CHAIRMAN. Then when you and Judge Sims have concluded, just announce that we will adjourn until 10 o'clock tomorrow.

Senator ROBINSON. I was not fortunate enough to hear the examination by Congressman Hamilton, and I only heard a part of the examination by Congressman Esch. I do not wish to duplicate any-

thing that has been asked you. but in your direct examination you stated that, before publishing your views, as expressed in the printed document to which you have referred throughout your testimony, Mr. Acworth, you first submitted your statements concerning the American railways to two eminent American experts on the subject?

Mr. ACWORTH. No, sir. I submitted the whole thing to two experts, one of whom was an American and the other one was an Englishman, and I said, "Have I got any figures wrong?" What I really said was this: "Have I strained a point? Have I fairly represented the figures, or are there figures that ought to have been put in, which would qualify my case?" That is the way I put it to them.

Senator ROBINSON. Have you stated who they were?

Mr. ACWORTH. I did not give their names.

Senator ROBINSON. I would be glad to have you do that.

Mr. ACWORTH. I suppose they can not have any objection. One was Prof. Cunningham, of Harvard, and the other was Mr. Stephenson, who is lecturer on railway economics in the University of London.

Senator ROBINSON. You referred to what you yourself designated as your "bias" on this subject. Do you oppose government ownership or government operation of railroads, or both?

Mr. ACWORTH. Well, they almost have gone together. I do not see any objection to government ownership and a lease, if that is the best system under the circumstances, but I would put it as a strong conviction that private enterprise is best, if we can keep it.

Senator ROBINSON. When you say "private enterprise" do you mean that it is better for the railroads to be owned by individuals or corporations and operated by them, or better for them to be owned by the public and operated by individuals?

Mr. ACWORTH. No, sir. I mean, quite clearly, that, in my belief, for a great many years the English railways, which never had a shilling of government money and never had any government help in the world—in the early days certainly led the world, and when people wanted to know how to run a railway they came to England to learn; and the railway literature of 40 and 50 years ago is full of French and German and American books by people who came to England and learned from the private railways of England how to do things. Nowadays, if people want to learn how to run a railway—the French and the Germans and the English—they come to the American railroads and learn from them; and the American railroads, aside from fractional assistance for the Union Pacific, and so on, in the early days, are entirely the result of private enterprise; and I think those two go a very long way to prove the case.

Senator ROBINSON. Have you made a special study of American railroads with a view to determining the best means of providing necessary and adequate transportation facilities in this country?

Mr. ACWORTH. I have a very definite idea myself, sir, that you can have all the transportation facilities in six months, if you can give them rates on which they can raise the capital.

Senator ROBINSON. Do you think the difficulties that now exist with reference to transportation in the United States are due to inadequate rates?

Mr. ACWORTH. It seems to me it is quite clear what has happened. You had a long series of falling prices, and you had railroads very

rapidly making great economies by bigger cars and bigger engines and bigger train loads, and all the rest of it, and you also had strong competition, and the result of all those things was that the railroads, by economizing in their methods, could afford to carry very cheaply. They tried to carry too cheaply in order to cut each other's throats. Now, then, just at the stage when they have got to the lowest rate, you introduce regulation, and the regulation says, "We will keep the rates down to the low figure, substantially; we will keep the rates down to that figure in the face of a market that has gone up 100 or 120 per cent for everything they use and for the wages they have to pay. Looking at it as an outsider, it seems to me that the thing must break down; it can not do anything else.

Senator ROBINSON. I do not know whether I understand you correctly or not. If I do understand you correctly, you are expressing the opinion that railroad rates in the United States are at present and have been during the past few years too low?

Mr. ACWORTH. Very much too low.

Senator ROBINSON. Are conditions here so analogous to those in continental Europe as to enable you to form a conclusion concerning the partial failure of State-owned railroad systems in Europe and what would occur in the United States if we had Government ownership here?

Mr. ACWORTH. Well, sir, before you came in I almost answered that question in this form: I suggested you had less experience of Government carrying on of commercial enterprises than any important government in the world. There is a great deal of evidence that the governments do not succeed, even with experience, over well, and it seems to me that for the United States to begin with an experiment the size of the railroads, to start with them at the going off, is a dangerous thing to do. I ought not to criticize your methods, but, at the same time, the way it would strike an outsider—

Senator ROBINSON. I hope you will feel entirely free, Mr. Acworth, to express any conviction you have on the subject. I have been very much interested and enlightened by your discussion of it, and I do not know that anything that I can ask you will illuminate the subject, except perhaps in my own mind.

Mr. ACWORTH. Well, sir, a member of the committee asked me yesterday about the telephones, and the result was, as I have said, I read the report of the Postmaster General of the United States. The Postmaster General says that he is greatly inconvenienced by the political pressure of his subordinates. He also says that he wants a system altered, under which all the higher appointments are filled from one political party. Well, now, your Post Office gets on in spite of it; but if, instead of—I do not know what you have, perhaps a couple of hundred thousand people in the employment of the Post Office—if you put 2,000,000 people in that position I do not know what the minister of railways would say. I presume he would put it in much more strong language than your Postmaster General does.

Senator ROBINSON. Do you know about the approximate number in railway service in England now, Mr. Acworth?

Mr. ACWORTH. They cut off 20 per cent, I suppose, in war. The number used to be called about 550,000 or 600,000, but that included shopmen.

Senator ROBINSON. They are all Government employees, are they?

Mr. ACWORTH. Oh, no; you mean at the present moment? Do you mean since the war?

Senator ROBINSON. I really did not have in mind the distinction as to before the war began and since the war began, but has the system been changed since the war began?

Mr. ACWORTH. The system has been changed to this extent—that the Government has made itself responsible to maintain the dividends of the shareholders. It no more interferes with the actual management of the railways—it has power to do anything—in fact, it no more manages the railways than you and I do.

Senator ROBINSON. The Government owns the railroads?

Mr. ACWORTH. No, sir.

Senator ROBINSON. Who owns them?

Mr. ACWORTH. The ownership is left exactly as before and can be handed back by the Government at six weeks' notice.

Senator ROBINSON. But who owns them—a private corporation?

Mr. ACWORTH. They have always been privately owned; there never has been a yard of public ownership in England.

Senator ROBINSON. And the ownership is private, and the management is in private hands?

Mr. ACWORTH. Yes.

Senator ROBINSON. How do you justify the Government in guaranteeing income on the investments?

Mr. ACWORTH. You see, it is this way: The Government has taken control over the railways; it can take the whole traffic off of one railroad and put it on another; it can order the railroad to carry troops and nothing but troops, and does not pay for them, and so on.

Senator ROBINSON. And fixes the rates?

Mr. ACWORTH. The rates, speaking of war conditions, nothing is paid for Government traffic, whether troops or stores. All other rates remain unaltered, but the Government makes itself responsible that the shareholders shall receive the same income as before. It might be they would earn a great deal more if they were allowed to earn it, but they are not. It may be they would earn a great deal less, and the Government has simply said that the income, as it was the year before the war, shall continue during the war.

Senator ROBINSON. That is because the Government is receiving benefits from the transportation companies in the carriage of its troops, munitions, etc. Before the war began did the Government guarantee income?

Mr. ACWORTH. The English railways have never received a penny, either in capital or in income, from the Government. They are even more absolutely private enterprises than yours.

Senator ROBINSON. The Government, before the war, then, never guaranteed an income?

Mr. ACWORTH. Never interfered in any way, except to regulate.

Senator ROBINSON. You have referred to the alleged necessity for Government ownership of railways, and among the number of grounds usually alleged is the construction of lines to meet the requirements of communities where private capital has not been found available?

Mr. ACWORTH. Yes, sir.

Senator ROBINSON. And I believe, if I understood you correctly, you said that no such condition exists in the United States. Did you

know that during the last two years there has been practically no railroad construction in the United States?

Mr. ACWORTH. Yes, sir; I knew and I know the reason, as I said.

Senator ROBINSON. What is it?

Mr. ACWORTH. That you can not earn a profit on a railroad when you make it under the rates you are allowed to charge.

Senator ROBINSON. But did you know during the last year the net income of the railroads was over \$600,000,000—greater than ever before in the history of the country?

Mr. SIMS. A billion dollars.

Senator ROBINSON. Six hundred million.

Mr. SIMS. A billion net income last year.

Senator ROBINSON. Well, the figures I have the last fiscal year show over \$601,000,000.

Mr. ACWORTH. I know that one-third of the share capital had no dividend at all.

Senator ROBINSON. Last year?

Mr. ACWORTH. Last year, I think 33 per cent, and that the return on those that did earn a dividend averaged, I think, 5 and a fraction. and I can not conceive that any wise man would put his money into a railroad with two-thirds of a chance of earning  $5\frac{1}{2}$  per cent as an average and one-third of a chance of earning nothing at all.

Senator ROBINSON. Now, I think if you will pardon me for making a suggestion, I do not care to attempt to argue it with you, but I think you are entirely mistaken as to the income during the last fiscal year.

Mr. ACWORTH. Well, no doubt some of the gentlemen here could confirm my statement, the railroad gentlemen here.

Senator ROBINSON. The income of the railways was greater than ever before in the history of the railroad industry.

Mr. ACWORTH. Yes; undoubtedly.

Senator ROBINSON. How do you account, then, for the discontinuance of railroad building on the theory that the income is insufficient if during the period when railroad construction has ceased the income has been greater than ever before?

Mr. ACWORTH. The gross income was very much greater.

Senator ROBINSON. I am speaking now of the net income. The net income for the last fiscal year was over \$601,000,000, and approximately \$1,000,000,000 gross.

Mr. ACWORTH. Yes. Well, it seems to me so clear with the trend of things. Let me put it this way, sir: If in a year, which you describe as the year of the biggest traffic they ever had, only two-thirds of the railroads got any dividends at all, and they only got an average of 5 per cent and some odd, what man would be foolish enough to put his money into railroad shares when he has to face an average year?

Senator ROBINSON. I think your figures are incorrect as to the average dividend, but I will not attempt to argue that with you. Your conviction is that the discontinuance of railroad construction in the United States is due to the inadequacy of returns on the investments in railroad properties?

Mr. ACWORTH. Is due to the prospect—partly to the past and much more to the outlook of the future.

Senator ROBINSON. Do you know that the railroads throughout the United States have now more business than they can do?

Mr. ACWORTH. Yes, sir.

Senator ROBINSON. That there has been for a year or two years a congestion in traffic on the railroads and that they are absolutely unable to take care of the traffic?

Mr. ACWORTH. Yes.

Senator ROBINSON. Does that indicate to you that the outlook for the railroads in the United States is bad?

Mr. ACWORTH. Yes, sir; very much so.

Senator ROBINSON. Why?

Mr. ACWORTH. Because everybody who knows the railroad business knows that the moment that you get congestion the loss is appalling. It costs you, once you tangle up your traffic in a knot, it costs you an appalling amount of money to untie the knot again.

Senator ROBINSON. But what is the entanglement due to?

Mr. ACWORTH. It is due to the fact that capitalists have not thought the prospect good enough to spend the money necessary to make the increase of facilities that is required in your country, if your country is not to have a collapse of its trade. I have been watching it for years and that is my firm conviction.

Senator ROBINSON. You have been watching it in the United States? That is what I was interested to know, whether you had been studying it.

Mr. ACWORTH. Yes; I have been here half a dozen times in the last dozen years, anyhow.

Senator ROBINSON. Of course conditions in continental countries are so different from those in the United States that a study of conditions there would not of necessity lead to any conclusion?

Mr. ACWORTH. No, sir; I should think I have spent nearly two years on this side of the water in the course of my various visits, and I think I have been in nearly every State in the Union.

Senator ROBINSON. You do recognize the fact that there is a necessity for revival in railroad construction in the United States in order to meet the requirements of railroad construction and increase in facilities?

Mr. ACWORTH. I think you are face to face with the most terrible crisis in commercial matters.

Senator ROBINSON. Have you worked out any conclusion as to the best means of solving that question, Mr. Acworth?

Mr. ACWORTH. Yes, sir. I can only say, tell the Interstate Commerce Commission to let the rates go up 20 per cent and as soon as there are men and supplies and car shops, and so on, available your difficulties will vanish.

Senator ROBINSON. Do you think that an increase in rates will solve the transportation problem in the United States?

Mr. ACWORTH. It is not the only thing of course. If you ask me the other thing, I do not think you can expect the railroads to do their work efficiently and economically as long as they are subject to so many contrary jurisdictions as at present.

Senator ROBINSON. I was coming to that in a few minutes.

Mr. ACWORTH. I felt I could not leave it merely as a commercial point.

Senator ROBINSON. You have no such thing as double regulation in continental Europe, have you, or even in the United Kingdom?

Mr. ACWORTH. Yes, sir; there is Government regulation.

Senator ROBINSON. I say, double regulation.

Mr. ACWORTH. No, sir; I beg your pardon.

Senator ROBINSON. You have Government regulation, of course, in all those countries.

Mr. ACWORTH. I beg your pardon, I did not catch it.

Senator ROBINSON. You understand here we have a system of State regulation on intrastate rates, and Federal regulation as to rates in interstate commerce?

Mr. ACWORTH. Yes; and not merely rates but also methods of working and things of that kind. No, sir; I know nothing of the kind in the world. I can not think of any country where it could exist.

Senator ROBINSON. Is it your opinion that the service on the railroads would be improved if we had a simple, single standard of regulation, in so far as that can be consummated, rather than the present double standard?

Mr. ACWORTH. It seems to me that it must be so. I put it this way: Suppose two States, each are perfectly wise, but decide differently—you would be better to substitute for them a central government that was not as intelligent. [Laughter.]

Senator ROBINSON. Very good. Now, you have said that in your opinion the main trouble, if I understood you correctly, with the difficulties which the American people are now experiencing in obtaining necessary transportation facilities grows out of the fact that the rates are too low and the returns on capital invested are inadequate?

Mr. ACWORTH. Yes, sir. I would put it more as prospect than as fact. I mean the facts are bad, but the prospects are much worse, and people always invest not on the past but on the future.

Senator ROBINSON. Capitalists regard investments in railroad properties as of uncertain value, and therefore are not in haste to make them?

Mr. ACWORTH. Yes, sir. One does not need to talk to people; one only has to look at quotations to learn that.

Senator ROBINSON. But the railroads have contended in hearings before this committee that they have experienced something of a breakdown in their financial credit. Are you prepared to say whether that is a bona fide contention or not or one designed to secure an increase in rates? Have you studied that particular phase of it?

Mr. ACWORTH. I have heard the charge made; I have heard the suggestion made, but it seems to me that if it were true it would be necessary to go further and to assume that the whole of the figures that are produced are manufactured. I read, for example, within the last two or three days a statement by the president of the Pennsylvania Railroad. He had paid 6 per cent dividend for a good many years past. He said: "I had a certain margin last year. I can see so many expenses," which he itemized, extra coal, extra wages, etc., "in this current year that I know must come onto me that I do not see that I have enough margin to pay my 6 per cent dividend." And he gives his figures, and he shows he is so many millions short of

paying his 6 per cent dividend. That is the Pennsylvania Railroad. If the Pennsylvania Railroad makes a statement like that, what can you expect of the average railroad?

Senator ROBINSON. Have you had any trouble with what we call car shortage in England?

Mr. ACWORTH. We have got a great car shortage at present.

Senator ROBINSON. But that is due to the war?

Mr. ACWORTH. Yes, sir. No; I do not think as a rule it ever gets to the height that it has got in America, and that it constantly gets in Germany. I do not think so. We have always been—capital has been very easily raised in England, and we have always been pretty lavish of capital. Our facilities are larger than are really needed, or at least have tended to be so, and the same with equipment.

Senator ROBINSON. How often has that trouble manifested itself in Germany? Does it occur frequently?

Mr. ACWORTH. That is a regular part of the autumn program.

Senator ROBINSON. What is it due to?

Mr. ACWORTH. It is due to the fact that in the autumn people begin to get in coal to supply their houses for the winter, and the Prussian Government says—and of course from an economical point of view they are quite right—they say, "It does not pay us to keep cars that can be used for only two or three months in the winter and are not wanted for the rest of the year. If you do what a prudent housekeeper would do and get in your coal in May there would be no difficulty."

Senator ROBINSON. Do you think car-shortage conditions in the United States are analogous to those that you have described in Prussia? Do you not know that for two or three years the United States has been almost continuously in a condition of car shortage; that it has not been confined to any particular season, but that it has extended over a period of two or three years?

Mr. ACWORTH. I have not got the statistics of the United States with me, but my recollection is very distinct that three years ago they had at least 200,000 cars standing empty month after month.

Mr. ESCH. If you will pardon me, I think, Senator, the shortage began in March, 1916.

Mr. ACWORTH. I mean to say that since 1907 there has generally been a surplus. While I was not here, I constantly read United States reports and statistics and newspapers and so on, and since 1907 there have certainly occurred car shortages. I dare say you know the statements published month by month, and one said there was a shortage and another said a surplus, but there is no question that since the panic of 1907 that it has nearly always been a surplus of cars and not always a shortage.

Senator ROBINSON. In the United States?

Mr. ACWORTH. Oh, certainly. I would undertake, sir, to say if you look at the diagram you will see that.

Mr. ESCH. There was no shortage in 1908, none in 1909, a little for a brief space in 1910, and a little in 1912; that begins the first year, March, 1916.

Senator ROBINSON. I know from personal knowledge that the car-shortage condition in the South—that section of the Union I come from—has prevailed for two or three years. I do not care to go into

the matter in great detail at this time, but I know that complaint has existed there for approximately three years, and I am wondering why the railroads have not anticipated—I am told that now it would require \$2,500,000,000 surplus, or approximately that, to provide the additional cars necessary to meet the requirements of the commerce of the country, and I am wondering why the railroad managements of the United States have not anticipated at least a part of this requirement.

Mr. ACWORTH. But they have been telling you so for a long while, sir. They have said, "Give us the money and we will buy the cars."

May I suggest—you have spoken of the South—may I point out how that exactly confirms what I have said? Southern railways never paid dividends; if southern railways paid dividends, they could buy cars. The shortage has not been severe where the railroads have good, fair dividends and reasonable financial strength and can raise capital. It is where you can not raise the capital that you go short for equipment.

Senator ROBINSON. You do not mean that as a universal statement; you mean that as a general statement, do you not?

Mr. ACWORTH. I mean to say broadly speaking.

Senator ROBINSON. So you think that the solution of the car-shortage problem is an increase of rates?

Mr. ACWORTH. Not at the instant moment. I mean the shops are chockablock and you can not get them, but the thing will work itself out if the railroads can afford to buy them, and they can not afford to buy them unless they have got credit to raise the money. That is the whole story, as I see it.

Senator ROBINSON. It has been suggested that I ask you this question: Will you describe in detail your experience and study of American railways and American commercial conditions? More in detail, and what study you have made of American railway conditions and American commercial conditions?

Mr. ACWORTH. Well, sir, I first came here in the year 1890. There was a sort of crisis in the relations between the railways and the shippers in England, and I wanted to make out why our rates were so much higher, why our freighters were complaining about the rates, and I knew the country where rates were the lowest was the United States, and I came over here to study the question. That was in the year 1890. Since then I have been here, I think, somewhere about a dozen times on separate visits, and I have traveled all over the country and talked to all kinds of people, members of interstate and State commissions and professors of economics, and railway men and railway financiers, and so on, and I have read, I should be sorry to say, how many American railway books, and so on. I have endeavored to keep myself in touch with the situation. But I ought to say, sir, that I did not come here to talk about American railways at all. I mean I should not like to be supposed to desire to volunteer any information. I came here to give an account of foreign conditions.

Senator ROBINSON. I understood that your principal purpose was to discuss conditions in the railways of Continental Europe and you have done that to very great profit to the committee, and my questions concerning American railways were for the purpose of determining in my own mind the value of your conclusions as to the

remedy best to be prescribed. I think every one realizes that the transportation system in the United States is threatened with a breakdown and that something must be done to relieve it, and some of us, at least, are anxious to find the best means, the fairest means in the interest of the public, of relieving that situation, and I feel that your experience and acquaintance with the problem in a general way would be of great profit to us.

Mr. ACWORTH. I am much obliged, sir.

Senator ROBINSON. I think I have already consumed perhaps, gentlemen of the committee, as much time as I should take.

Mr. SIMS. Senator, it is entirely with you.

Senator ROBINSON. I want to ask Mr. Acworth one or two other questions, then I will yield to Mr. Sims.

Mr. SIMS. Use all the time you wish, Senator.

Senator ROBINSON. Your investigations have led you to the conclusion that a double standard of regulation is confusing and tends to inefficiency?

Mr. ACWORTH. Well, sir, may I put it this way? Supposing it had existed from historical reasons, can you imagine that anybody would introduce it to-day as an efficient system?

Before you came in something was said about Mr. Bryan's proposal to have State branches and National trunk lines, and a member of the committee said that Mr. Bryan has withdrawn that, so we need not discuss it. Now, in effect that is what you are doing. You have got in the same train, you are breaking up what is essentially one, you have got two passengers in the same train, the one of them who is moving between two points inside the State and the State says he shall pay 2 cents, and you have got another passenger who is moving outside the State and sitting alongside him in a chair and paying 2½ cents, because the Interstate Commerce Commission takes charge of it.

Of course it is for you to consider the weight to be attached to the situation that exists, but an outsider can not be expected to think there is anything to be said for it.

Senator ROBINSON. Do you think, Mr. Acworth, that the enormous territorial extent of the United States makes it necessary that some local authority have and exercise some jurisdiction in matters of regulation? You understand what I mean, the impossibility of one central tribunal understanding all the complicated questions?

Mr. ACWORTH. Oh, yes, sir; it is quite clear; suppose there were no State jurisdictions. It is quite clear you would have to do one of two things, either your Interstate Commerce Commission would have to circulate, or it would have to have branches or subordinates or whatever arrangement you think proper, localized. That, one assumes, would be one form of organization.

In Great Britain, which is a mighty small country compared to the United States, our railway commission consists of three members—two laymen and a judge—a judge of the higher court. If it sits in England it is a judge of the English high court; if it sits in Scotland it is a judge of the Scottish high court; and if it sits in Ireland it is a judge of the Irish high court. The two lay members move to which ever capital the commission sits in, but the judge is a judge of that country. That is how we deal with it.

Senator ROBINSON. Well, sir, I thank you for your testimony. I yield now to Mr. Sims, who will conclude the exercises.

Mr. SIMS. Mr. Acworth, your testimony, taken in connection with the statements of the railway executives, seems to leave a very gloomy outlook for this country. I am not asking for comment just now. I want to premise my questions with that statement: You have read Mr. Thom's testimony before the committee, have you not?

Mr. ACWORTH. No, sir; I think I saw a short abstract of it.

Mr. SIMS. You ought to see it all. It is worth your while to read it.

Mr. ACWORTH. Judge Lovett sent me his, and I have read that.

Mr. SIMS. Then you have got perhaps not so thorough a statement as that of Mr. Thom, but naturally along the same lines. They say, or at least Judge Thom does emphatically, who represents the entire railway executives as their attorney, and of course, speaks by authority of all of them, that unless legislation along the lines which they propose is adopted in this country, unless we give them the legislation they ask, or other legislation that will have the same effect, that Government ownership is inevitable. They do not say it is desirable. They are not working for it, certainly, but they say it is inevitable. So if present conditions make a change inevitable we have a gloomy outlook, unless we know we can get relief in some way. On the other hand, you have shown that all Governments that have tried public ownership have made a failure of it, and that the principle of public ownership is a failure within itself. Now, we are confronted with the difficulty, perhaps, of not being able to get the legislation the railway executives and Judge Thom think we have to have, and if we do not get it we shall have Government ownership, and it, to your judgment, seems to have been a failure whenever tried. So it looks as if we are confronted with a failure without any reference to what we may do or what we do not do. We start in with inevitable failure whichever way we go. I believe you started out by saying, in substance, that railroad building or building of roads was regarded in all countries as a Government function?

Mr. ACWORTH. I was using "road" in our English sense where it means a public highway. What I was thinking was that when railways came into existence it was supposed that they were merely public roads with a rail instead of a flat surface.

Mr. SIMS. You mean to say that the building of highways is a means of transportation?

Mr. ACWORTH. A means of communication.

Mr. SIMS. And is a Government function?

Mr. ACWORTH. It always has been so recognized.

Mr. SIMS. Then what has already been recognized I suppose should be considered as settled?

Mr. ACWORTH. No, sir; for this reason, I think, I venture to put this as the point. Transportation was never recognized as a Government function. You put together two things—a road and a carriage on it. The one is a Government function and the other is not.

Mr. SIMS. Let me ask you this question: Without the road you never would have the carriage or the vehicle?

Mr. ACWORTH. No, sir.

Mr. SIMS. Then it of paramount importance that we have the road over which the carriage can go?

Mr. ACWORTH. Yes, sir.

Mr. SIMS. So, after all, it is absolutely a fundamental proposition that the providing of an essential part of the means of transportation is a Government function, is it not?

Mr. ACWORTH. No, sir; I do not think so.

Mr. SIMS. You could not run your wagons without a wagon road?

Mr. ACWORTH. No; and your road would be no good unless you had a wagon.

Mr. SIMS. But the road is the primary necessity, is it not? You have got to have it first?

Mr. ACWORTH. It depends on which takes the longest to build.

Mr. SIMS. Oh, I think you ought to be frank about the matter. You are here volunteering your information, which I admit is very great, but I think you should concede frankly those things which are inevitable facts.

Mr. ACWORTH. It is only an academic point, in any event.

Mr. SIMS. It being a Government function to provide the primary means of transportation or communication, then the Government is undoubtedly under obligation to do whatever may be necessary to accomplish transportation. I am starting out with that idea, that it is primarily a Government function. Now, how many Governments in Europe have not adopted ownership?

Mr. ACWORTH. I can not tell you the exact number.

Mr. SIMS. England is one that has not?

Mr. ACWORTH. England, Spain——

Mr. SIMS. I mean large governments.

Mr. ACWORTH. Greece, Turkey; Holland as far as operation is concerned.

Mr. SIMS. You mean that none of those has any State-owned railways?

Mr. ACWORTH. Yes. State-operated railways. France has about one-eighth of its whole mileage.

Mr. SIMS. Does not France contemplate owning them all?

Mr. ACWORTH. No; emphatically not.

Mr. SIMS. Germany has it completely?

Mr. ACWORTH. Yes; practically.

Mr. SIMS. And Russia?

Mr. ACWORTH. A large proportion, but before the war Russia was going in for the policy of subsidizing private railways.

Mr. SIMS. I do not mean they own all the railways, but practically all?

Mr. ACWORTH. Yes; most of them.

Mr. SIMS. And Japan has it?

Mr. ACWORTH. Yes.

Mr. SIMS. And India has it?

Mr. ACWORTH. Yes; mainly operated by private companies.

Mr. SIMS. I mean Government ownership or Government responsibility, and Government aid.

Mr. ACWORTH. Oh, yes; I will answer straight out that I do not think that there is any country in the world, except the United Kingdom, where the Government has not put money into railway enterprises.

Mr. SIMS. And it has done it in this country?

Mr. ACWORTH. Yes; in the old days.

Mr. SIMS. All the railways were built—I do not mean every mile of railway, but there was nearly always a contribution from the counties, the cities, and the States, and sometimes from the Federal Government?

Mr. ACWORTH. Yes; in the very early days.

Mr. SIMS. And in nearly every instance they have lost their money, which was a contribution in that way to the building up of the railroads of the country?

Mr. ACWORTH. It may be so.

Mr. SIMS. Tennessee to-day owes about \$6,000,000 as a result of guaranteeing railroad bonds before the Civil War. The railroads have not paid it, and we have had to pay it, or, rather, to assume it. Now, we are in this situation here, with 48 States with sovereign powers, to some extent, to regulate railroads or to interfere with them in such a way as to be a burden on the railroad companies. Now, what might be entirely practicable and feasible in England along the line of private railroads would not apply in this country with the same assurance that it would in England. We are confronted here with a condition in which the railroad companies themselves say that they can not get sufficient private capital on account of all this overregulation, and that that is the reason they are not building railroads, and we know that they need to duplicate or to increase the trackage they already have and the need of a great many other additional facilities. It is frankly admitted, I believe, among the best authorities that for the next 10 or 12 or maybe 15 years they ought to spend a billion dollars a year on construction; I do not mean in building new lines, but also in additions to those already constructed.

Mr. ACWORTH. Yes; I quite understand.

Mr. SIMS. And that the market for railroad securities, under all this regulation and under State charters, can not be secured without legislation which would be contrary to the very principles of our Constitution, and they frankly state that Government ownership has got to come, unquestionably, because we can not cease transportation; we must have communication.

Mr. ACWORTH. Of course, that is on the line of what happened, especially in Italy. The Italian Government would not face the question of what to do, and the result was that they took a header into interstate ownership, and I do not think they are very well satisfied with the result. Of course, it may happen in any country. If people will not face a problem, the problem will come to them sooner or later, and they will have to face it.

Mr. SIMS. As a matter of course—and what I am saying about Government ownership is not based upon the idea that I am seeking to bring it about or that I desire it—if we can have as good transportation and as much of it and as cheaply, and as thorough development of the country in the building of additional lines as we need, by private ownership, and serve the people as well at as low a charge, I certainly do not want to go into Government ownership just as a mere matter of experiment. It seems that in every case you have referred to they went into Government ownership because of something more than a mere theoretical desire to experiment with it; and that is the same situation that confronts us here. If we go to Government ownership it will not be voluntary, but because, under our

conditions here, the railroads are not prosperous and can not expect to be in the future. Now, I believe you attributed the comparative success of Government ownership in Germany to the fact that they have a flat country over which to operate. Was it not just as flat when the roads were owned privately as now?

Mr. ACWORTH. Oh, I did not use the argument for that purpose at all.

Mr. SIMS. The question was asked you by Mr. Hamilton about the country being flat?

Mr. ACWORTH. Yes.

Mr. SIMS. And it was suggested that that was one reason why Government ownership had succeeded there?

Mr. ACWORTH. That is why they show large profits.

Mr. SIMS. Why would not the same conditions operate to make the privately owned railway show large profits?

Mr. ACWORTH. If the conditions had been the same when the private owners had a chance, but they were not—they had not a unified system, they had not the enormous traffic. The conditions when the private owners were operating them were so entirely different that you can not make any comparison between them.

Mr. SIMS. But it was not due to the topography of the country and to the fact that France was hilly and mountainous?

Mr. ACWORTH. No. Prussia had then, as they have now, the advantage of a flat country—whoever owns the railways. But the other conditions 40 years ago made it impossible for the private railroads to produce as good results as the public railroads do produce to-day.

Mr. SIMS. Well, as a means of avoiding the dangers which you and nearly every other railroad man whom I have heard speak on the subject have suggested—the trouble growing out of political conditions in this country, making Government ownership impracticable, in your opinion, and also making it impossible to operate the roads we have and to improve them and build others that we need, without doing it only by an ever-increasing freight rate, what would you think of the idea of having only one corporation in the United States, chartered by the Government of the United States, so that it would be a Federal corporation, and to have that one railroad company acquire every mile of railroad in the United States that is not a mere plant facility—I mean every road that does any real commerce—and to have the Government guarantee the principal and 4 per cent on the bonds—not exceeding 4 per cent, I mean—and authorize the issuance of stock and let the private individual take his choice between bonds and stock, the stock paying not exceeding 6 per cent, and then all the earnings of the corporation above these amounts to be used for railroad purposes, pure and simple, the Government having a lien upon every mile of the railroad acquired to indemnify itself against possible loss by reason of this guaranty, and the Government, through the Interstate Commerce Commission or other regulating body, passing on the question of freight rates, on the question of the issuance of bonds, and let the Government have directors in this railroad company similar to the members of the Federal Reserve Board, their salaries to be paid out of the earnings of the company, and all the surplus to remain in the treasury of the company for the

purpose of taking care of weak roads or weak portions of a road—it would all be one road then—or to tide over lean years, when the rate charged for passengers and freight was not sufficient.

That would get away from the political influence and what we call in this country “pork-barrel” legislation, because of a Senator or a Member of the House wanting to have a railroad for his own district to help him along politically. We would in this way have Government control of the best kind; we would have all the incentive of private enterprise, and still we would be getting away from the wasteful competition and duplication of services, which have been brought about by private enterprise. But I am not a railroad man—are you a practical railroad man?

Mr. ACWORTH. No, sir.

Mr. SIMS. You have never been engaged in the operation of railroads?

Mr. ACWORTH. I am a director of various railroads. I am a lawyer, practically speaking.

Mr. SIMS. You have a personal interest in railroads?

Mr. ACWORTH. I have a very intimate personal interest in all kinds of railroads. I have spent a large part of my life in dealing with railway law, as a lawyer.

Mr. SIMS. I did not know whether you had simply given this matter academic thought and study, or whether you had practical actual operating experience with railroads.

Mr. ACWORTH. No, sir. I have not been an operating railroad man, but I have been as close to it as anybody could be without actually being an active operating man.

Mr. SIMS. What I have in mind is that you, not having been identified with the administration of any particular railroad company, can look at it in a broad, unbiased way.

Mr. ACWORTH. I do not think my directorships are likely to bias my judgment.

Mr. SIMS. No. You know, when we go to examine a railroad man and have him tell us about his own company and his own system, we can only get it from his biased point of view, but in your case, I thought it would be an entirely unbiased opinion.

Mr. ACWORTH. I hope so.

Mr. SIMS. Now, then, my suggestion would get away from the fears of political interference and of building railroads where they were not needed and still would give absolute Government supervision; the States would have no power to interfere in an important way, but the property would still be taxable by the different States. Now, in order to keep away from Government ownership, which you think is very undesirable in any country—I suppose these countries you have been talking about will all go back to private ownership; they will find that it is a failure and go back to private ownership—

Mr. ACWORTH. Belgium is showing signs, after 70 years.

Mr. SIMS. Well, Belgium is not much larger than Rhode Island; and I suppose Germany will go back to private ownership?

Mr. ACWORTH. I can not say, I am sure.

Mr. SIMS. I can not work it out, because I am not a railroad man; but I thought perhaps you were, but it turns out that you are not. But, along that line, we have the Government guaranty, which gives

a market, and that settles the question of credit, and then we have not this political trouble that you spoke of, and we will have the very highest order of talent, both in the owners and the operators. Now, why can we not work out this problem along that line and forever reduce rates instead of forever increasing them? I said not over 6 per cent for dividends; but I would modify that by saying that we might give the stockholders an increase of dividends upon a reduction of rates by adopting a sliding scale or something of that sort; then we will have the speculative interest of the individual as well as other advantages growing out of it. Why can not something of that sort be worked out and thus avoid the inevitable ruin that has been pictured by you and by the railroad executives, because I honestly do not think that we can pass the bills they are asking for, and I do not think that this country is now ready to go to Government ownership?

Mr. ACWORTH. I think, sir, that the fundamental point is this: I do not care what your machinery is; in the long run you will never buy more than three-quarters of a cent's worth of work for three-quarters of a cent. That is the real essence of the American situation. What you are asking the railroads to do is to work at a price that they can not work at; and whoever manages the railroads—assuming that this management would be 5 per cent more economical, if you like—the rate, then, might be 5 per cent lower than it is under the existing conditions; but if you had archangels to manage the American railroads, and only allowed them an average income of 7.38, they could not do the work and raise the capital necessary to increase the plant. That is my first answer; and the other point—

Mr. SIMS. If the Government was guaranteeing the bonds and the interest?

Mr. ACWORTH. It does not matter who guarantees it. Of course, if you say that the Government is prepared to allow the ordinary shipper to pay less than the service is worth and to make up the difference out of taxation, you can cut your rates to anything you like; but if you keep your rates down to 7.38, what is going to happen is that the Government is going to have to make up the difference out of taxation if the Government undertakes the job. I see no way out of that.

Mr. SIMS. I am speaking of a private corporation.

Mr. ACWORTH. It does not matter. If the Government guarantees, there is a gap between the guaranteed interest and the net income, and that gap has got to be filled by the Government, and it has got to impose taxation to meet that guaranty. You can not get away from that. My fundamental proposition is that you are asking for more than three-quarters of a cent's worth of work to be done for three-quarters of a cent.

Mr. SIMS. Of course, you can make a statement and assume that that is the fact.

Mr. ACWORTH. Of course, I am not suggesting that my opinion is worth anything.

Mr. SIMS. I do not mean that your opinion is not worth anything but you said "if you do so-and-so."

Mr. ACWORTH. I am asked to express my opinion, and I say, whatever your machinery is in America, the fundamental difficulty is that

the shipper is not paying enough for the work that is being done for him. It can not be done at the price.

Mr. SIMS. Would not the consolidation into one road, thus doing away with a vast amount of unnecessary expenses and doing away with this conflicting regulation by the different States, and all that sort of thing, would not that of itself work for large economies?

Mr. ACWORTH. It will work an economy that is very large—in millions of dollars—but that is very small, compared to the enormous billions of dollars in the annual budget of the railways of the United States.

Mr. SIMS. Last year, Mr. Acworth, if I recollect correctly, the gross receipts of the railroads of the United States were over \$4,000,000,000.

Mr. ACWORTH. Yes.

Mr. SIMS. Now, then, Mr. Lovett, I think, gave us the total value of the railroads of this country as about \$17,000,000,000. Speaking in round numbers, that is about as I recall it. Now, the people pay the gross earnings. The people of this country, or the patrons of the American railroads, in 1916 paid one-quarter of the entire reproduction value, or the actual value of the railroads; one-quarter for one year's service. Therefore, in four years the gross receipts would pay for the railroads absolutely.

Mr. ACWORTH. Yes; if you can get rid of your expenses.

Mr. SIMS. Furthermore, Mr. Lovett showed—and it is certainly true—that the expenses of the American railroads are increasing all the time, by reason of the increased cost of terminals and the increased demands for additional terminals, and for all other kinds of facilities and for labor.

Mr. ACWORTH. Yes, sir.

Mr. SIMS. Now, all the unnecessary duplications of service are very unnecessary and wasteful, which would all be eliminated. Evidently it is a great deal of expense to the railroads to carry on this present campaign, which seems to be necessary in order to save their rights as they see it. There is a vast expense attached to State railroad commissions, and all that sort of thing; and then we talk about the railroads not being in politics! I would like to know how any railroad or any interest in this country can keep out of politics, the rights of which are determined by legislation. How can they keep out of politics? They are governed by law—by city ordinances, county laws, State laws, and National laws; and so why are they not at perfect liberty to be in politics, in the sense of showing their needs to the legislative bodies? Now, all such expense might be saved if all roads were owned by one single corporation. We know that the great systems, like the Pennsylvania, the New York Central, and the Union Pacific, by consolidating many small lines into one great system, have been a great benefit to the section they served, as well as to their stockholders and bondholders and the country at large.

Mr. ACWORTH. Yes; but if you will send to the Interstate Commerce statisticians and tell them to make you a figure of all the expenses of the kind that you are suggesting—the cost of appearing before legislative committees, the cost of running commissions, things of that kind—and put them together, they are a big figure from the point of view of your expenditures and mine; when we think in hundreds of dollars, they are, indeed, a very big figure; but,

put alongside the billions of dollars that the railroads are spending every year, they are a flea bite.

Mr. SIMS. Well, the railroads, like the Government, have not a dollar of their own; they only pay out what they receive.

Mr. ACWORTH. Yes; but an engine does not burn any less coal when it is on a consolidated railroad than when it is on an independent line, and a man does not do any more work, and those are the things that really cost money.

Mr. SIMS. Do you believe, then, in competition between railways?

Mr. ACWORTH. I am a back number in that respect; yes, sir.

Mr. SIMS. England has not gotten away from that?

Mr. ACWORTH. Yes; England has, to a considerable extent; but I am getting old, and I am out of date, and I still do believe in competition to some extent.

Mr. SIMS. I mean competition in railway service.

Mr. ACWORTH. Yes.

Mr. SIMS. If you have absolute, reasonable, and just regulation, what good does competition do, except at a competing point, where the railroads render a service below what they ought to charge for it?

Mr. ACWORTH. If you can get another world, where there is no competition, and train your men in that world, and then bring them into this world, you will get an ideal system; but if you have railroad service with no competition, the men who have been trained under a noncompetitive system will get slack without it. I believe that will be your trouble.

Mr. SIMS. There will still be competition with other means of transportation—with the ocean, the lakes, the rivers, and the trolleys.

Mr. ACWORTH. Oh, no doubt; but at present the president of a railroad goes to his superintendent and he says, "Why do you not do as well on this division as the other fellow in that division?" And then the directors say to the president practically the same thing, "Why do you not accomplish on our line what the other fellow is accomplishing on his line?" And they are always making comparisons. I do not think you can do without it.

Mr. SIMS. You are still standing by your old theory of competition, which you have stood by for so long, like some of our Democrats, called "mossbacks."

Mr. ACWORTH. I am getting old, as I say.

Mr. SIMS. Now, here is an instance: Three hundred million dollars, or something like that, has been spent for two splendid passenger railway terminals in New York City, and yet the entire revenues of the two systems are charged with the expense of those terminals; and still they do not charge the passenger 1 cent more for these terminals—it is an absolutely free service, as far as the passenger is concerned—and I will go on the railroad that has that kind of a terminal every time, and so we all will, as a matter of convenience—and a very great convenience, too. But the existence of these terminals is due to competition, so Mr. Lovett says, and he is a director of the New York Central. So competition there brought about a capital increase of \$300,000,000, which is a burden upon all the commerce of those roads for all time to come.

Mr. ACWORTH. I do not agree with Judge Lovett, sir, frankly.

Mr. SIMS. You have read his testimony?

Mr. ACWORTH. Yes.

Mr. SIMS. I am taking his statement as to the facts.

Mr. ACWORTH. I am speaking of what you have quoted. The Grand Central Terminal does not bring in a penny of revenue to the railroad, but it is highly desirable, and it is a great convenience.

Mr. SIMS. And it is paid for by the public.

Mr. ACWORTH. Yes; and the shareholders. Those terminals are paid for by the shareholders being content to take a little less dividend, and I do not see why the public should grumble at all.

Mr. SIMS. They do not get any less.

Mr. ACWORTH. Well, they do not get any more. I have been a shareholder in the Pennsylvania for years, and I know.

Mr. SIMS. But the shareholders own the railroad.

Mr. ACWORTH. But they do not get any more dividends.

Mr. SIMS. That makes no difference.

Mr. ACWORTH. Oh, yes; it does to the shareholder.

Mr. SIMS. No; it does not make a particle of difference. I may own a farm and live on it, and may never get a dollar out of it; but if I am putting my earnings back into it, I am simply depositing my earnings in the farm.

Mr. ACWORTH. I would agree with you if I had any chance of selling my shares in the Pennsylvania as a going concern instead of having to sell to a new shareholder.

Mr. SIMS. Do you not think you could sell your stock in the Pennsylvania Railroad now at a good price?

Mr. ACWORTH. Yes; but for a great deal less than I paid for it.

Mr. SIMS. The public is not to blame for a man making a bad investment.

Mr. ACWORTH. I bought into the best railroad you have in America.

Mr. SIMS. And that shows that one of the greatest experts on railroads in the world did not know how to judge of the value of railroad shares.

Mr. ACWORTH. I did not know how long it would take the American railroads to convince the American public of the fact that you can not, in the long run, buy a thing for less than it costs. If we had known that the American people would not understand that rates must go up as costs go up, we Europeans would not have put our money in it. That is clear.

Mr. SIMS. Suppose you put the rates up now, and then, after a while, everything costs more, are you going to put them up again?

Mr. ACWORTH. If the cost goes up, yes; just like the bootmaker, and everybody else.

Mr. SIMS. Every dollar you take in in rates, you take it from some other man who owned it before, and so the thing is just balanced; the railroads have more, and the public has less, but the country has just what it had before.

Mr. ACWORTH. The country, as a whole, but the shareholder has not.

Mr. SIMS. But the shareholders have not yet reached the point where they are very much afraid of their shares. If you had much stock in the Pennsylvania and the future was as gloomy as you seem to think it is, you would be thinking about selling it?

Mr. ACWORTH. You know that our Government has taken possession of all our American stocks to finance the war.

Mr. SIMS. They have worked selective conscription on your property?

Mr. ACWORTH. Yes.

Mr. SIMS. Which, of course, is just temporary.

Mr. ACWORTH. "Selection" I think it is called.

Mr. SIMS. "Selective" is the term they use here. But what we have here is a practical situation. If you have read Mr. Thom's testimony, and also Mr. Lovett's, you have got an idea of what it is.

Mr. ACWORTH. Oh, I know the situation quite well.

Mr. SIMS. I do not believe it is possible to get the legislation that is asked for.

Mr. ACWORTH. Then I am sorry for the American public. The American public will suffer.

Mr. SIMS. Yes; and the American railroads will suffer, too.

Mr. ACWORTH. The people of the United States are going to have their traffic facilities absolutely blocked, because you may introduce bills, but you are not going to get the Government into the possession of the railroads and get the new machinery started next week or the week after that. There will be a gap of some years, and before that time has lapsed you will have that machinery broken down.

Mr. SIMS. As Senator Robinson has said, here are two years in which railroad construction has been almost nil—only about 1,000 miles each year—and this country will not stand for that.

Mr. ACWORTH. It is not a question of adding 1,000 miles in some backward State?

Mr. SIMS. No; it is not a question of a backward State. The tracks themselves need doubling.

Mr. ACWORTH. You want immensely more equipment in larger terminals, and all that kind of thing.

Mr. SIMS. Well, is not a double track construction? That is new construction, is it not?

Mr. ACWORTH. Yes; but that would not come into the 1,000 miles of new railroad.

Mr. SIMS. This country is too new for us to assume that railroad construction is complete.

Mr. ACWORTH. Oh, yes.

Mr. SIMS. But suppose we are going to build another line, and we want to build the road so as to do the business of the country, but not upon a confiscation freight rate. Now, something must be done. We have come to a stream and there are two bridges, and you say that if you can not cross on one you will not cross at all. Now, looking to the public interest, I want to do whatever will serve the public best.

Mr. ACWORTH. The point I want understood, sir, is that I do not care what machinery you use in operating the railroads; that, comparatively, is a secondary issue; but whatever machinery you use, it is inevitable that the charge you make for doing the work of the railroads has got to go up, for the same reason that the charge for a loaf of bread or a pair of shoes or anything else has gone up.

Mr. SIMS. You were speaking of this ton-mile rate. You do not insist, of course, that there is any comparison between the Belgian ton-mile rate and that of the United States.

Mr. ACWORTH. What I would say is this: The conditions in Belgium or in Germany or in France are such that you ought not to expect to get as low a ton-mile rate there as here.

Mr. SIMS. And so the comparison with these little countries—they do not have the conditions that we have here, with multiple regulations and multiple sovereignty. The railroads are now asking for a 15 per cent increase, and if you noticed Judge Lovett's testimony, he told us what they did in Pennsylvania in the case of a former increase. They turned around and nullified it in part.

Mr. ACWORTH. Yes.

Mr. SIMS. How many States will nullify this increase if it is allowed?

Mr. ACWORTH. That depends on whether you will let them.

Mr. SIMS. How can we help it?

Mr. ACWORTH. I have studied the decisions of your Supreme Court enough to know that they have said that you have great powers under your Constitution over the States in the matter of commerce.

Mr. SIMS. True; but I take it that the Pennsylvania Railroad would not have yielded to that in Pennsylvania if they had thought they could prevent it. But the question is, How can you or anybody else show us how to solve the existing difficulties with which we are confronted?

Mr. ACWORTH. Well, sir, when you put to me one country with 260,000 miles of railroad I can only say that we hesitated long in putting 20,000 miles under one administration in Canada, which is the biggest thing ever put together in the world, except in Prussia, which has 26,000 miles, and yours would be ten times as big.

Mr. SIMS. Before the Supreme Court held that the purchase of the Southern Pacific by the Union Pacific was a violation of the Sherman law, Mr. Harriman had under his control 28,000 miles of railway.

Mr. ACWORTH. Yes.

Mr. SIMS. And it was generally believed that the service on all those roads was better.

Mr. ACWORTH. Yes.

Mr. SIMS. And that was more than the whole Empire of Germany has under its control.

Mr. ACWORTH. Yes.

Mr. SIMS. It seems to me that in this country that consolidation would result in great economies and the doing away with wasteful methods and duplication of construction and service.

Mr. ACWORTH. You can put them together, but you must break them up again.

Mr. SIMS. I do not mean under one manager, but in one corporation.

Mr. ACWORTH. But the corporation must have one head.

Mr. SIMS. Well, the Government of the United States has one head, but it has a great many other things that resemble heads that are subordinate.

Mr. ACWORTH. Yes; it has 48 State governments.

Mr. SIMS. And a single corporation can have just as many separate subheads as may be necessary, because railroad men would operate it who are now operating the railroads, and they would have all the skill that would be necessary, and would not be fighting with each other. Here we have two railroads running along within sight of each other from here to Baltimore and from Baltimore to Philadelphia, with double bridges, double tracks, and double tunnels, and double expense all the way through. Of course, we can not do away

with those, but we can prevent that kind of thing in the future, but not if we are to continue cutthroat competition between systems.

Mr. ACWORTH. Competition is a big question, sir. Cutthroat competition, of course, we all disapprove of.

Mr. SIMS. Yes; provided we are to pass on the "cutthroat" feature of it.

Mr. ACWORTH. Reasonable competition in facilities, I believe, tends to be in the public interest, but I admit that I am in an increasing minority.

Mr. SIMS. To-day the Government of the United States is taking the taxes of the people and improving rivers and harbors and, it is often alleged, for the purpose of affecting freight rates on existing railroads—to make those railroads less able to serve the public—and sometimes it operates to make a man who secures it very popular when he has a little river in his district that has no merit to urge; but he comes here and says: "I want to regulate the railroads through this river," and it is done through taxation.

Mr. ACWORTH. Do you ever get a report afterwards as to the effect of this "regulation"?

Mr. SIMS. Now, I admit that we are in a situation where something has got to be done. The railway executives say that if something is not done to give them relief, Government ownership is inevitable. Now, if I have got to cross the river, I want to know what kind of a boat I am going across in. We need the facts as to those countries which have had government ownership, but here we are in a situation where it is a matter of choice, and not a matter of theory, but rather a matter of necessity.

Mr. ACWORTH. May I suggest that there is really. If I may say so, there is not any need for a heroic remedy at all.

Mr. SIMS. Is not the proposition of a 20 per cent increase in freight rates a heroic remedy as to the industries of the country which will have it to pay?

Mr. ACWORTH. Not when the 20 per cent increase on the product is only enough. Do not people take into consideration that if cost of production goes up the charges will be made? What is there in a freight rate that is different from anything else?

Mr. SIMS. Upon the absolute theory of private ownership with competition to regulate private ownership, then you are right about it.

Mr. ACWORTH. Never mind who owns the thing. Supposing the State owns the railroad, is that any possible reason why the State should carry your business, your bread, or your beef, or any of your commodities, whatever they are, for less than it costs? The State ought to charge a fair rate.

Mr. SIMS. There are State reasons which never appeal to the private owner. We have put in \$400,000,000 building the Panama Canal, in connection with which the transportation facilities may be at least in part considered, as it was also a national defense measure; but it never was considered that we would pay back the money out of the operating charges, and no private company ever would build it as an investment; and no doubt in my mind there are railway improvements needed that no private companies will ever build, because they will not pay as a private investment.

Mr. ACWORTH. But it will pay, if you will allow the railroad, whoever owns it, to say to the man who wants his stuff carried,

"I will carry your stuff for you on condition you will pay me what the service is worth," and that ought to be said to the freighter, whether the carrier is a public corporation, whether it is the Nation or a private individual; there is no difference in the principle. There is no justification for asking the State to carry the traffic of the ordinary shipper for less than a reasonable price for carrying it, and the reasonable price means the cost of doing the work and the fair interest, the fair earnings on the capital that is applied to enable you to do the work.

Mr. SIMS. Profit on the investment?

Mr. ACWORTH. Yes; return on the investment.

Mr. SIMS. Does it not stand to reason that you can do a better public service without burdening the public with a profit than you can to burden them with a profit, as far as the financial end of it is concerned?

Mr. ACWORTH. Yes, sir; I think that comes back under this point, How much cheaper will the private corporation do the service? If the private corporation saves 2 per cent of the cost by greater efficiency and takes 1 per cent for dividends and the other 1 per cent goes to the public in rate reduction, the public are better off than if the less efficient State corporation does it at the 2 per cent higher price and there is not any money to divide.

Mr. SIMS. If rates would never increase, and yet the railroads would have all the money they need, I do not suppose there would be any clamor at all about this thing. But you come here with the prime demand for an increase in freight rates of 20 per cent as the solution of present railroad problems.

Mr. ACWORTH. I do not demand it. I say the facts demand it. The butcher does not demand the increase in the price of meat.

Mr. SIMS. You mean the situation demands it?

Mr. ACWORTH. The butcher adjusts his prices to the cost of production. Why should not the railroad? There is no difference.

Mr. SIMS. But there is less cost without profit than with profit in doing the same service.

Mr. ACWORTH. But the profit that is turned over is mighty small.

Mr. SIMS. That is all true, but the net profit of railroads in the United States, as shown by the report of the Interstate Commerce Commission in 1916, was over \$1,000,000,000.

Mr. ACWORTH. That was not a profit.

Mr. SIMS. It is net income.

Mr. ACWORTH. That was not a profit.

Mr. SIMS. They reported it as net income.

Mr. ACWORTH. \$900,000,000 and some odd out of that for doing the work.

Mr. SIMS. Is that after paying interest?

Mr. ACWORTH. Well, it is the net profit of the railroad company.

Senator ROBINSON. It was \$601,000,000 and some odd.

Mr. SIMS. The Interstate Commerce Commission gives it as \$1,000,000,000 and some odd according to the report as they kept the accounts.

Mr. THOM. Judge Sims, the way the Interstate Commerce Commission states it as being \$1,000,000,000 and two hundred odd million was before interest was paid, and after interest is paid Senator Robinson is right—the figure was about \$601,000,000.

Mr. SIMS. There is that much profit to the railroads after all operating costs, maintenance, and expenses were paid. If the Government owned the railroads they would not pay any profit.

Mr. ACWORTH. I beg pardon. With greatest respect, you are not correct. If the Government owned it they would have to provide the capital that the shareholders are now providing, and on that capital the Government would have to pay interest at 4 per cent, say.

Mr. SIMS. The Government would have to pay it providing the business did not pay it. When I speak about profit I have reference to dividends; I do not have reference to interest on bonds.

Mr. ACWORTH. But please remember this. The dividends represent the money put into the property. True, if you made it a bond you would have got the money a little cheaper; you would not have to pay 5 per cent on it; you only would have to pay 4 per cent, but the dividends represent money put into the property and the Government would have to put in the money which the stockholders now put in. They could have got it cheaper, but only a little cheaper.

Mr. SIMS. I am not talking about the matter as it originally existed. I am talking about the situation which now confronts us.

Mr. ACWORTH. Suppose you buy the property, the Government has got to issue bonds and pay interest on bonds.

Mr. SIMS. But the Government will issue bonds against the property and the property earns interest, therefore it does not become a tax upon other taxable property at all.

Mr. ACWORTH. But it has got to earn the interest.

Mr. SIMS. It earns it now?

Mr. ACWORTH. Yes, sir.

Mr. SIMS. Under all the adverse circumstances it has to confront, and some of the properties pay a good dividend?

Mr. ACWORTH. Yes; and some pay none.

Mr. SIMS. If the strong roads would take care of the weak ones, it would equalize matters, and we might get along very well, but how would you do it under private ownership?

Mr. ACWORTH. There is not enough to go around, sir. That is the difficulty.

Mr. SIMS. I do not know whether there is or not.

Senator ROBINSON. Mr. Sims, have you about concluded?

Mr. SIMS. I may not be able to conclude in two days, but I am ready to quit at any time the committee desires.

I have some notes here, but I have not tried to follow them. I just wanted to get Mr. Acworth's views on the situation, a situation which has got to be met somehow or other.

Mr. THOM. I should like to say, if you will permit me, in reference to what transpired here the last year, that if you associated the year 1916 with the preceding years, the three or four or five years before, you will find that the returns on the book values are very much less than 5 per cent, and for that series of years are less than the previous series of the same number, even with the greater earnings of last year.

Senator ROBINSON. If there is no objection, we will now take a recess. We may be able to conclude in the morning.

(Thereupon, at 10.30 o'clock p. m., the committee adjourned until 10 o'clock a. m., Wednesday, May 9, 1917.)



# INTERSTATE AND FOREIGN TRANSPORTATION—GOVERNMENT CONTROL AND REGULATION.

WEDNESDAY, MAY 9, 1917.

UNITED STATES SENATE,  
JOINT COMMITTEE ON INTERSTATE COMMERCE,  
*Washington, D. C.*

The joint committee met at 10 o'clock a. m., Hon. William C. Adamson (vice chairman) presiding.

The VICE CHAIRMAN. The committee will come to order. The Chair understands that Senator Cummins desires to ask Mr. Acworth some questions. Senator, you may proceed.

## STATEMENT OF W. M. ACWORTH—Resumed.

Senator CUMMINS. Mr. Chairman, I was not able to be in attendance upon the session last night and I do not know exactly what the line of cross-examination was. There are only two or three questions that I would like to ask. It is a little difficult for me to propound questions upon this subject, because I am somewhat in sympathy with the views of the witness, and I do not want what I ask to be considered as an attempt to overturn what he has said.

I observe, Mr. Acworth, in comparing the rates that are charged for service in Prussia and Germany and the rates charged in the United States, that you found the German rates were nearly twice as great as the American rates?

Mr. ACWORTH. Yes, sir.

Senator CUMMINS. Did you in that comparison take into account the average length of haul in the United States as compared with the length of haul in Prussia or Germany?

Mr. ACWORTH. I do not think I put it in so many words. I did say last night—and I think it is obvious that it is so—perfectly impartial railway experts, looking at the figures, would say you naturally would expect higher rates in Germany than in the United States. For one reason, Germany out of those rates succeeds in making a very handsome profit. Out of the American rates there is not enough money to spare. That is to say, the American rates should be higher under American conditions and the Prussian rates could be lowered under Prussian conditions, and imagining the American rates put up somewhat and imagining the Prussian rates brought down somewhat, there is still a gap. You have mentioned the haul. That undoubtedly accounts for a good deal—

Senator CUMMINS. I am not thinking of the financial phase of it, or the financial outcome. I am only thinking of a proper comparison. Our average rate is substantially three-fourths of a cent per

ton per mile. The average Prussian rate is about 1 cent and three-tenths per mile—I am not giving the exact figures.

Mr. ACWORTH. Yes, sir; you are almost accurate.

Senator CUMMINS. I have stated about the fact?

Mr. ACWORTH. Yes, sir.

Senator CUMMINS. Now here the railway rate, looked at logically, is made up of a charge for terminal service and a charge for transportation or haul.

Mr. ACWORTH. Yes, sir.

Senator CUMMINS. And the rate per ton per mile will decrease therefore as the length of the haul increases.

Mr. ACWORTH. Yes, sir.

Senator CUMMINS. Now, do you remember what the average haul in Germany or in Prussia is?

Mr. ESCH. It is 62 miles.

Mr. ACWORTH. I was going to say 70.

Mr. ESCH. Sixty-two miles, and in the United States 254.

Mr. ACWORTH. That is assuming the United States to be treated as a single system. The average haul, treating the systems separately, if I remember right, is 150.

Senator CUMMINS. I think that is an error. I think the haul in the United States—the haul of 254 miles, probably—is on the single road.

Mr. ESCH. These are statistics given by Dr. Johnson.

Senator CUMMINS. I do not recall precisely, but I think the haul in the United States is five or six times as long as the haul in Prussia.

Mr. ACWORTH. I would not contradict you, but unquestionably it is very much longer.

Senator CUMMINS. I am taking the haul as it actually occurs, and not confined to an initial road or any particular road, and a just comparison necessarily must take into account the difference between the haul in this country and the haul abroad?

Mr. ACWORTH. Unquestionably.

Senator CUMMINS. My only point was that in the comparison of three-fourths of a cent in our country and a cent and three-tenths in Prussia; that factor was not taken into account.

Mr. ACWORTH. Of course, all international comparisons have to take account of a vast number of things. The way I would like to put it is this: That factor of length of haul unquestionably is very favorable to the United States; on the other hand, another factor is that the average wages paid for during the work are double in the United States. That tells, of course, the other way. I do not think it could be translated into statistical figures, but the point I would make is this: If you bring an impartial railway man from the planet of Mars, who has no views on State ownership pro or con, and you show him the Prussian result of 1.30, show him the American result of three-fourths of a cent, he would say, making all allowances on one side or another, there is a big balance to be explained by efficiency. That is how I would put it. How big the balance is is a matter of dispute, but I feel certain any impartial person would say there is a big balance, and the only explanation is efficiency.

Senator CUMMINS. It is easy for us to believe that American railroads are more efficient than Prussia.

Mr. ACWORTH. I must say I do not think it is difficult.

Senator CUMMINS. It is quite gratifying to our pride, I am sure. But I do not desire to discuss that point. I simply wanted to emphasize the one thing.

Mr. THOM. Senator, may I give you the exact figures of the average haul on individual railroads in the United States in the Interstate Commerce Commission's report? I have it before me. It is 162.37 on individual roads.

Senator CUMMINS. I am familiar with that report, but that is not a fair statement of it, and I do not think the Interstate Commerce Commission meant to deceive the public at all; I am sure they did not. That means simply the haul upon a single railroad.

Mr. ACWORTH. Yes, sir; that is right.

Senator CUMMINS. And not the haul actually occurring in transportation.

Mr. ACWORTH. I think it was gotten wrong on the stenographer's notes. One figure—260—was mentioned.

Senator CUMMINS. I thought it was a little more than that. But this same report states the average haul.

Mr. ACWORTH. Treating it as a system.

Senator CUMMINS. Looked at from a broader standpoint, namely, considering all railroads as a single road.

Mr. ACWORTH. Of course, Prussia has the advantage of having been able to concentrate on a single system, and of course the deliberate policy of the Government here has been to prevent concentration. That makes a very considerable difference in the length of haul.

Senator CUMMINS. The matter about which I really wish to ask you, however, is more fundamental. It may be it is not entirely pertinent as cross-examination, but, nevertheless, I want your view upon it. You said, in reviewing State ownership historically—and I think you said very truly—that the assumption of transportation by the State has nearly always been brought about by some condition that does not relate to either efficiency in management or the hope of reducing the rate. Some other considerations are those which seem to make it necessary for the State to assume that function. I understood you correctly, did I not?

Mr. ACWORTH. I would rather put it in this way—that abstract questions of whether on the whole, regarded as a historical proposition, the State would be more efficient, or would have a better service, had not been the governing consideration, but rather the special circumstances that existed at the time. The point was raised here, for instance, Mr. Sims raised it—

Senator CUMMINS. Let me give the special circumstances which seem to me to confront the people of this country. Our railroads are competitive, and it is impossible to destroy competition without readjusting the ownership of the railroad, as I look at it. All the railroads of this country must carry freight at substantially the same rate. Let us assume that there were a large proportion of those roads which can carry freight or do carry on their business at certain rates with abundant profit. A smaller proportion of the railroads, being compelled to do that business at the same rates, find themselves in hopeless insolvency—I am assuming that the same efficiency as found in the management of all the roads—How are we

to meet that problem? How are we to give to the smaller railroads or the weaker railroads rates that will be compensatory and adequate for a reward upon the capital invested or the value of the property without giving to the stronger railroads rates that will enable them to earn more than they ought to earn?

Mr. ACWORTH. Well, sir, the question is very difficult to answer, because I expect my idea of what "more than they ought to earn" may not be the same as yours.

The VICE CHAIRMAN. Well, admitting the Senator's premises.

Mr. ACWORTH. I will admit the fact, if you will put it at 20 per cent as the point beyond which they ought not reasonably to be allowed to go.

The VICE CHAIRMAN. Let it be 20 per cent.

Mr. ACWORTH. If you will accept 20 per cent dividends as a figure beyond which they ought not to be allowed to go—

The VICE CHAIRMAN. The Senator did not ask you whether the profits were sufficient. His point was how can you increase one without increasing the other when a mere division of freight rates would drive the business from one to the other and rob them entirely of the business.

Mr. ACWORTH. There could be no question of this, it is not possible to have two different scales of rates for competing companies alongside. We must start with that. Therefore, if you are to deal with that proposition that the two railroads must be kept alongside, the one earning less than a reasonable amount, and the other possibly arriving at a stage when it would earn more than a reasonable amount, clearly you have got either to reduce the higher or put up the lower, or in some shape balance it between the two.

The VICE CHAIRMAN. Now, tell the Senator how.

Senator CUMMINS. I think possibly we do not look at it from possibly the same standpoint. Let us assume that the railroads which carry in the United States 80 per cent of the business are able upon certain rates—I will not say the existing rates, but certain rates—to maintain their properties, accumulate funds for replacement and betterment, provide for all the exigencies of the lean years, and still pay 7, 8, and 9 per cent upon the value of the property. The railroads which carry 20 per cent of the business, being compelled to do their work at the same rate, find that they accumulate nothing for the compensation of capital. Now, let us just assume further still that it is the purpose of the American people not to permit the capital invested in these public properties to earn more than 7, 8, or 9 per cent, with allowance for the contingencies that I have mentioned, how are we to meet that problem?

Mr. ACWORTH. Well, if you ask me—if it is not criticism of the policy which the United States has—and I feel that that is something that a stranger ought not to make—if you will forgive me for making it, in answer to the question I should say this, that there are two possible policies. There is a policy of trusting to private enterprise. That means a man takes his risk, and he also takes his chances of great profits. If you are going to leave the 20 per cent, or whatever the figures are at the bottom—30 to 40 really, that are not earning dividends—if you are going to leave them at the bottom, without earning dividends, the only way to get the capitalists to get into the business is to leave the people at the top to earn something, a great

deal more than 8 or 9 because otherwise the average is not good enough to tempt capitalists.

That is not the policy you have adopted. There is another policy; of course it is difficult to introduce it afterwards but it might have been a perfectly reasonable policy at the beginning. On the one hand you say, "We shall not allow you to go past 6 or 7 per cent" but give support to the people at the bottom; say to them at any rate their dividend shall not be worse than 3, provided they put up a railroad that the public have agreed they want.

I can understand either of those policies but I can not conceive as a possible policy in the long run that you limit at the top and give no guaranty at the bottom. Of course Congress can do what it likes to the railroads that are already there; they can not get out. They have put their money in that as a permanent property. But if you want—as you do want—to have building go on every year and have new money put in you can not get it on the basis of saying nobody shall get anything to speak of on the average, and a large number shall get something below the average. It can not be worked; it is not business.

Senator CUMMINS. I do not think that is the only alternative, though. The Government could make up out of its Treasury the deficit or loss to the weaker railroads.

Mr. ACWORTH. Yes, sir; that was my idea; that is what I meant. Let me put it again. I mean that the necessary complement of a policy which says you shall not go past 7 or 8 or 9 is a policy which says you shall not fall under 2 or 3 or 4. Where the money is coming from, whether from raised rates or direct contribution from taxpayers is a separate question.

Senator CUMMINS. Of course, Government ownership is another way.

Mr. ACWORTH. Yes, sir. Then again you would have the case where you had taken over the railways not because you thought the Government would manage them better, but because there had come a financial knot that it seemed very difficult to untie.

Senator CUMMINS. We assume for any given time the revenue for a large proportion of the railroads is sufficient and the revenue of a smaller proportion is insufficient. Then we must either make up the sum necessary for the smaller railroads or we must take them all over.

Mr. ACWORTH. Yes; but it is a dangerous thing to answer as broad a question as that without a little more reflection. However, it looks so.

Senator CUMMINS. It occurs to me that that is the real problem in our regulations. There is another alternative, is there not? We could readjust the ownership of the railways, so that in any given system the surplus revenue of the strong railroads would be sufficient to make up the deficit of the weaker railroads.

Mr. ACWORTH. I believe that is a very practical policy, but, of course, it is a policy that could only be worked out in 20 years. It could not be done by hard and fast orders to do it instantly. You could not say to the Pennsylvania Railroad to-morrow: "You have got to take over the Erie and spread the dividends over the two capitalizations." You can not do that; but if you encourage governmental supervision in a single head and a policy of consolidation,

I have no doubt that would work itself out in the course of time. That is what is happening in England, and has been for a good many years.

Senator CUMMINS. The length of time would depend on a good many circumstances. We have power, I assume, to do it, probably, under our form of government.

Mr. ACWORTH. To order one company to take over another?

Senator CUMMINS. I assume we have under the power of eminent domain the authority to dispose of ownership as we might see fit.

Mr. ACWORTH. Clearly you could take possession of, we will say, the Erie Railroad, but the further stage of getting the Pennsylvania Railroad to take it would depend on whether the Pennsylvania Railroad Co. thought the terms were good enough.

Senator CUMMINS. No; I do not mean to have it inferred that we would compel the Pennsylvania to buy that property; but if a company were organized under a Federal incorporation law, we could give it the authority to condemn and take over any group of railways that we might think the public interests required should be consolidated into one ownership.

Mr. ACWORTH. That is to say you would take one strong and important company and build up on it in its district?

Senator CUMMINS. Yes.

Mr. ACWORTH. Of course, that, I think, is merely in the line of historical development. As you know probably, our Government has for the period of the war time control of our railways. I think it is quite clear that they will never go back to private ownership exactly in the shape they left them in. There is no question, I think, that with us there will be very much of what you have suggested, the building up on the basis of a certain number of strong companies in different districts, practically absorbing all these lines within that district.

The VICE CHAIRMAN. That is the best argument I have ever heard for Federal embargo. I have always believed the law ought to compel one rich person and one poor person to marry so as to maintain an equal distribution of the wealth of the country.

Senator CUMMINS. I am not giving my adhesion to this plan irrevocably. I simply intended to indicate that I see an insoluble problem in the regulation of railways, as we are attempting to regulate them.

That is all I care to ask, and I am very much obliged to you, Mr. Acworth.

The VICE CHAIRMAN. Senator Townsend, will you proceed?

Senator TOWNSEND. As I said to begin with, I feel rather guilty about asking questions without having heard the witness, because I would like to have heard him. Senator Cummins has covered a point that I had thought of asking you if he had not already covered it. I suppose that you agree that centralized management of many concerns is likely to be more efficient than to have those concerns managed separately?

Mr. ACWORTH. Yes, sir; up to a point. I take it there is really a point where the advantages of centralization are overbalanced by the disadvantages of getting too big for proper supervision. It is a point to be ascertained by trial and error in the individual case, but I am sure that it exists as a principle.

Senator TOWNSEND. I think it does. I listened the other evening when you were mentioning some of the disadvantages of Government ownership. Of course, one of the arguments that is made, as you undoubtedly know, for Government ownership is that it centralizes control. You have shown how, under the Government, that is not necessarily efficient, or rather, experience showing it to be the reverse. The point that Senator Cummins has brought out has been the one that has disturbed me not a little, and I have felt that its solution was hindered by the very laws which we have already established in this country which prevent combinations. Under the law systems have been disorganized, disintegrated, because it was felt that they were inimical to the public welfare, in the form of monopolies; but have you, at any time in your testimony suggested any remedy for this condition of which the railroads complain, namely, that they are not able to get money enough to operate their roads successfully?

Mr. ACWORTH. As I see it, sir, assuming present conditions broadly to continue, there are two things necessary. The one is to enable them to make their money go as far as possible by avoiding waste effort; for example, the point that was raised yesterday of State regulation; clearly, regulation by 48 States, as well as by the Federal Government, results in a great deal of waste motion and consequent expense. Looking at it purely, I mean, from the cost point of view, the Government can establish a uniform control and thereby decrease expenses; but, when all is said and done, to decrease expenses, as I see it, is not sufficient. You have also got to increase rates, and the only way to do that is to accept the fact that world prices have gone up for everything, from railway service to boots and shoes, and that the railways must be allowed to put up their prices. It seems to me, regarding the proposition of railways as existing, in whosoever's hands they are, you want to reduce expenses by avoiding waste motion, but you want to increase rates, because, broadly speaking, they are selling railroad transportation at an uncommercial price.

Senator TOWNSEND. Would you still hold that opinion or would you apply that opinion to all railroads regardless of the efficiency of their management?

Mr. ACWORTH. Yes, sir; I certainly would. I would say this: That the Pennsylvania is as good a proof of the necessity of higher rates as the most bankrupt railroad in the States. I should say that if conditions continue what they are. Take the Pennsylvania, which, by the good fortune of its original shareholders, got the first call on the finest traffic region in the world, which for 70 years—I have never seen any evidence to the contrary—has always been well managed, has always been efficiently and honestly managed. And they are to-day able to earn something under 6 per cent on their property investment. Now, if with all the cards in your favor you can only get 6 per cent, why should anybody put his money into a less likely looking venture? If the Pennsylvania can only get 6 per cent, or less than 6 per cent, anybody who puts his money into an inferior railroad must know that he will get less than 6 per cent, and he will not do it. Therefore it is to the public interest that the Pennsylvania should be earning 10 or 12 per cent to encourage money to come in.

Senator TOWNSEND. I do not care to go into an argument of that question. I am willing to concede that the Pennsylvania Railroad is well managed, but the question as to whether it is getting insufficient revenue to maintain that management is a mooted question now; that is a question that is in dispute, and I do not care to go into that, but I will take the case of a road where it is equally admitted to be inefficiently and improperly managed. Under those circumstances you think that they should have more money to meet the extravagance of that kind of management?

Mr. ACWORTH. Well, I think, sir, the broad answer is what I already gave, that if you are going to limit at one end the maximum, you must put in at the other end a minimum; but, clearly, efficient regulation by a central body can, in a pretty short time, put an end—it can not make everybody equally intelligent or equally virtuous—but it can put an end to evident and flagrant mismanagement. The public authorities, in the first place, could interfere, and if the thing comes out so that nobody can deny it, you can pretty well rely on the shareholders to interfere. It is a slow process, but it works.

Senator TOWNSEND. Yes; exceedingly slow.

Mr. ACWORTH. Yes; it is slow.

Senator TOWNSEND. And it has been somewhat discouraging, although I recognize that the railroads have been handicapped, to a certain degree, by legislation. Now, I was interested in your statement a moment ago, that at the close of the war in your country, in Great Britain, a readjustment of ownership would occur, if the properties go back to private ownership.

Mr. ACWORTH. It looks very much like it.

Senator TOWNSEND. How are they going to do that?

Mr. ACWORTH. Of course, this is all hypothetical?

Senator TOWNSEND. Yes; I realize that.

Mr. ACWORTH. And I have been out of England for six months, and things have developed since I have been there; but it seems to me that it is evident that what will happen is this: The Government, nominally, can hand back the railways on six weeks' notice. As a matter of practice, it is clear that they can not do it; it is clear that there are too many new problems that have arisen that would have to be solved, and the Government can only hand back slowly, and, as I see it, they would probably hand back under certain terms—they will arrange that they hand back to one of the great systems the great bulk of its lines, and suggest that it cut off its own excrescences into other people's territory, and hand them over to somebody else. and, on the other hand, that certain small companies in its district be not handed back to their former shareholders, but that they make a bargain with the big company, and be handed over to it. The Government would, as it were, take the position of a new manager who came into a great concern, with many branches, and who came to the conclusion that it was desirable to shut down such and such a plant, and transfer the operations to another works that could do it more economically, and one thing and another of that kind.

Senator TOWNSEND. How could the Government enforce that kind of an arrangement?

Mr. ACWORTH. Well, governments have great persuasive power, and with us, of course, the Government can do anything. There is nothing in the nature of constitutional limitations with us; the Gov-

ernment can enact to-morrow that your coat be transferred to your neighbor, and there is no appeal, so there is no legal difficulty, but it would, I have no doubt, be adjusted by give and take.

Senator TOWNSEND. How could you compel my neighbor to take the coat. In other words, how could you compel a railroad to take another railroad, the operation of which was not profitable?

Mr. ACWORTH. Of course I am talking law and not practical politics.

Senator TOWNSEND. Yes.

Mr. ACWORTH. As a matter of law, supposing the Government says to the Northwestern Railway, "You should take in the North Staffordshire," which is a small line lying inside of it, and they say, "We will not." The Government could in that case enact that from a certain date the Northwestern itself should be taken over; there would be no difficulty about that. If they like, they can take the property of the Northwestern Railway and hand it over to the North Staffordshire or hand both over to a newly incorporated company. There is no limit to that, but our Government has worked in entire harmony with the companies.

The VICE CHAIRMAN. A condition of that sort is calculated to produce harmony?

Mr. ACWORTH. I beg your pardon.

The VICE CHAIRMAN. The power of the Government to do that is calculated to produce harmony, I should think.

Mr. ACWORTH. That is no doubt so.

Senator TOWNSEND. Well, by analogy, would that be, in your judgment, the proper way for the United States to proceed—to take charge of the railroads and then apportion them out into systems?

Mr. ACWORTH. Well, sir, if you ask me personally, I should not like your Government to take the railways, for fear they should stick to its fingers, and I should suggest that you must come to rearranging. There are two theories: The one is to adopt the French system and put all the railroads in a given district into one. Some friends of mine who have thought a great deal about the matter believe that that is what you are coming to. It seems to me that the objection to that is—all the railroads between New York and Chicago, for instance, are an obvious district. Now, I can not imagine myself that you would put together two railroads like the Pennsylvania and the New York Central; it seems to me that they should remain separate; but the alternative scheme is—and I say I think it is what we are coming to in England—that you would build upon the New York Central, on the one hand, as one of the great old lines, by bringing in a good many lines that are now independent. Similarly you would build up on the Pennsylvania, let us say, the Norfolk & Western and the Chesapeake & Ohio and the Western Maryland and railroads of that kind that naturally would seem to belong to that traffic basin, so to speak. But that, one way or another, consolidation is coming, I have no doubt.

Senator TOWNSEND. I think I have no further questions to ask.

The VICE CHAIRMAN. I suppose the New York Central might colonize New England, and take it under its wing, and redeem the New Haven & Hartford?

Mr. ACWORTH. Of course, sir, you raise a very good instance of the local feeling. You all know New England much better than I

do, but I should have thought that New England and a sort of feeling of being a distinct entity, and that New England would exceedingly resent being handed over to a non-New England company.

The VICE CHAIRMAN. My enforced absence last night denied me the pleasure of hearing a part of the cross-examination; and I hope I will not trench on anything that has already been gone over. You will pardon me if I do; I shall not be prolix at all. Of course, your reputation is that you are a great lawyer in England, but what has been the nature of your practice?

Mr. ACWORTH. I should be sorry to say that I was a great lawyer, sir, but my practice has been wholly in matters that concern railways and other public utilities.

The VICE CHAIRMAN. Have you represented the railroad corporations?

Mr. ACWORTH. Yes; and very often their opponents.

The VICE CHAIRMAN. Did you ever sue any railroads?

Mr. ACWORTH. I beg pardon?

The VICE CHAIRMAN. You never sued any railroads?

Mr. ACWORTH. No; I have never had anything to do with damage questions, or anything of that kind. I have frequently opposed the railroads, and have also appeared for them in the Railway Commission, on questions of rates and things of that kind; but my main practice has been before parliamentary committees. I do not know whether you know, sir, but our custom is that if a railroad wants to issue new capital, or to make a new branch, or anything of that kind—

The VICE CHAIRMAN. My only idea was to develop whether you had appeared chiefly as representing the railroads, or against them.

Mr. ACWORTH. On whichever side saw fit to hire me.

The VICE CHAIRMAN. You are a director in a good many railroads, are you not?

Mr. ACWORTH. No. I am a director of the London Underground Company, which owns or controls most of the transport facilities in London—street railways and electric railways and omnibuses—a great many things.

The VICE CHAIRMAN. Are you financially or professionally interested in any American railroads?

Mr. ACWORTH. I think I have got a few thousand dollars left, sir, but they are mostly sold, as all our American securities are since the beginning of the war. I had, a dozen years ago, most of my money in American railways, but it is mostly out now.

The VICE CHAIRMAN. From your interesting statement, if I understand you correctly, I would gather two or three lessons. One is that whatever degree of superior efficiency may exist in the Prussian system is due to two facts; that is, uniform or central control and high rates. Is that a proper inference from the results in that country?

Mr. ACWORTH. Which country are you now speaking of?

The VICE CHAIRMAN. Prussia—Germany.

Mr. ACWORTH. Prussia?

The VICE CHAIRMAN. Yes; and the further lesson that I gather is that those same things could be obtained without Government control—both uniform control and higher rates could be attained without Government control?

Mr. ACWORTH. Oh, yes, sir; cleary. There is no necessary connection with Government control in either of those things.

The VICE CHAIRMAN. It is only a question of having men with sense enough to manage them and authority to do it?

Mr. ACWORTH. Yes.

The VICE CHAIRMAN. I do not care to go over all your testimony about Government ownership, but I do want to ask you two or three further questions, and that is the reason I asked you in regard to your experience and observation of these operations.

Mr. ACWORTH. Yes.

The VICE CHAIRMAN. In your testimony you have talked largely about small countries, comparatively. Of course, Australia and South Africa and Canada are larger.

Mr. ACWORTH. Yes.

The VICE CHAIRMAN. But the proportion of business is not so dense?

Mr. ACWORTH. Yes; of course, every country is very small compared to the United States.

The VICE CHAIRMAN. In this country we not only have the vast extent, but we have a large and dense business.

Mr. ACWORTH. Yes.

The VICE CHAIRMAN. With oceans on two sides and bays and inlets and rivers on every hand.

Mr. ACWORTH. Yes.

The VICE CHAIRMAN. So that we can hardly hope to get more than a few hundred miles away from what is called water competition. Now, I want to call your attention to what I conceive to be the two great difficulties in regulating these railroads. This country is committed to regulation, and the carriers now say they are submitting to regulation, and they are exercising the rights of American citizens to participate in making the regulations. The difficulty is to stop the people from complaining about their rates not being the same—that is one great difficulty—and the other is to know how to settle disputes between the carriers and their employees. Now, to go 3,000 miles, with people at each end of the route demanding to buy at the same price that exists at the other end of the line, that seems to be an impossible and preposterous proposition; and yet that is just about the actual condition in this country?

Mr. ACWORTH. Yes.

The VICE CHAIRMAN. And if they can go from Boston to California, and then from California back to Boston at a low rate, every intermediate point complains that it is discriminated against. Now, I want to know if you in your experience have fallen upon any system or any suggestion of a system whereby rates could be made or charges could be made so as to silence those complaints?

Mr. ACWORTH. No, sir. I do not believe that you can make such rates—you can not do it—as will look reasonable to the man in the street, who has never had it explained to him. I think what you have got to do is to approach it from the other end, and to do what a well-known public man said in England—you have got to educate your masters.

The VICE CHAIRMAN. I want you to get the reasoning into this record, so that the folks who do not understand it may read it.

Mr. ACWORTH. Let us take the conspicuous instance that, after 20 years of discussion and litigation, has practically been decided by the Interstate Commerce Commission that it is reasonable to charge more for a carload of freight when shipped from Chicago to Denver than from New York to San Francisco. Now, I think if you will give me an average intelligent man, and let me sit down with him for an hour, I shall be able to make him understand that.

The VICE CHAIRMAN. You mean that you can make him understand what we are holding now?

Mr. ACWORTH. Yes.

The VICE CHAIRMAN. But I want to know if there is any practice in any country or any practice that can be fallen upon of adjusting those rates in such a manner as will eliminate the necessity for apologizing for or explaining the present system?

Mr. ACWORTH. Frankly, no; because that means that you will have to go to equal mileage rates, or something of that kind, and equal mileage rates, to anybody who understands the system, are a flagrant injustice.

The VICE CHAIRMAN. What do you say about having a service charge for all stations alike, and then charging a mileage rate on top of that?

Mr. ACWORTH. It will not work. Railroads are a commercial business and you can not get away from commercial considerations, which come in in all kinds of ways.

The VICE CHAIRMAN. If you charge the same terminal fees for handling for a station 6 miles away as you would for one a thousand miles away, the people at the station 6 miles away would complain that the combined charges would be too high, would they not?

Mr. ACWORTH. Yes. The Prussians frankly grade their terminals. They always make a terminal charge in addition to the mileage rate, and they make a less terminal charge if the traffic is going 20 miles than if it is going 200 miles.

The VICE CHAIRMAN. Although the terminal service is precisely the same?

Mr. ACWORTH. Yes; precisely the same; but it is done because otherwise the rate would be too high for the traffic.

The VICE CHAIRMAN. Is there any country where there is a practice of charging a terminal fee or a terminal rate so as to add then for each successive station only a small increment of the rate? Is there any existing system anywhere now where that is practiced?

Mr. ACWORTH. Well, the Prussian system is this: There is a charge put down, a fee for receiving the freight.

The VICE CHAIRMAN. Is not that uniform?

Mr. ACWORTH. A trifling fee; it is a cent or two.

The VICE CHAIRMAN. I say, is not that uniform?

Mr. ACWORTH. Yes. Then there is another charge for weighing it, and there is another charge for issuing a receipt for it—a penny or two—and this is all put into the bill. Then there is a charge for terminals, and then there is, in the case of most classes of traffic, a charge of so much per mile; and if it goes 1 mile it is a five-hundredth part of what it is if it goes 500 miles.

The VICE CHAIRMAN. They charge for each mile in proportion to the distance?

Mr. ACWORTH. Yes. Let me elaborate that, because it might be very misleading. That is so on most classes of traffic, but it is not so on the classes of traffic under which most of the actual tonnage is hauled. Supposing you are sending coal. If there is not an exceptional rate—as there very often is—if there is not what you call a commodity rate—supposing coal is going on the ordinary coal tariff, it goes on what we call in England a sliding scale. The first 10 miles are so much per mile, and the next 20 miles are so much per mile, and the next 30 miles are so much per mile, and so on.

The VICE CHAIRMAN. That is a descending scale?

Mr. ACWORTH. Yes; a sliding scale, decreasing per mile as the mileage increases, and the Prussians use both systems—flat mileage rates and increasing mileage rates—alongside.

The VICE CHAIRMAN. You do not think it would be practical in a country like the United States—I will say “in the United States,” because I suppose there is no other like it—to say at the receiving terminus that the charge shall be uniform and at the delivering terminus it shall be uniform, but that there shall be a descending scale of rate per mile, so that in the case of 100 stations the increase at each station might be infinitesimal?

Mr. ACWORTH. I frankly say that it would be a revolution, by the side of which abolishing Congress and the President would be a trifle. It would upset the whole daily life of the country. It has all grown up on a system that has worked itself out in 70 years, and I have seen in my experience——

The VICE CHAIRMAN. You have known revolutions, even political, to be beneficial to mankind?

Mr. ACWORTH. But that would be shutting up one big manufacturing town and opening it elsewhere. Nobody, until they go into it, can appreciate what that would mean.

The VICE CHAIRMAN. For the United States to take over 260,000 miles of railroad would be revolutionary, would it not?

Mr. ACWORTH. Yes.

The VICE CHAIRMAN. And for them to compel a rich railroad to acquire a poor one would be revolutionary, too, would it not?

Mr. ACWORTH. I think you can encourage without compelling.

The VICE CHAIRMAN. The question with me is not whether it would be revolutionary, but I am trying to find out if you, as a world-wide expert, can give us any real valuable opinion as to whether such a thing as that could be possible and worked out efficiently?

Mr. ACWORTH. Frankly, I do not believe you can. You can put it on paper—I could put the scheme on paper—but when you came up to the fact and took it to Pittsburgh and took it to Youngstown and to Chicago, you would probably find yourselves torn in pieces.

The VICE CHAIRMAN. Is it your deliberate opinion that the system which we have, as it is being worked out, is the best possible if we will go on and improve it?

Mr. ACWORTH. Yes, sir; absolutely. If you ask a French expert or a German expert or an English expert what are the best railways in the world, I suppose they will each say their own country first, but they will always say the United States second.

The VICE CHAIRMAN. I am not asking you which is the best.

Mr. ACWORTH. Nobody has any doubt that they are the best railroads in the world, on the whole.

The VICE CHAIRMAN. As a witness who has been all over the world and studied railroads all over the world, I am asking you as a practical proposition.

Mr. ACWORTH. Yes.

The VICE CHAIRMAN. I am not asking you what is the best railroad or which country has the best railroads, but the best system of regulating the railroads.

Mr. ACWORTH. The proof of the pudding is in the eating. The result is that you have got the best railroads in the world. But I can see no need for revolution; I do not see any necessity, either, for purchase or for entire reconstruction of the railroads or anything else. I think the thing can work itself out quite satisfactorily under consistent regulation, accepting at the outset that whoever runs the railroads—the Government or anybody else—they must either charge higher rates or get the money from the taxpayers.

The VICE CHAIRMAN. I will not stop to quarrel with you about the question of rates or what the facts are at present with regard to them, but suppose now that we come to the hypothetical situation suggested by Col. Cummins. If you authorize—do not compel, but authorize—a company to take over another company, or authorize a new corporation to take over both, or any number of them, from your experience, and as a judge of human nature and corporate practice, would they be likely to assimilate the poor ones with the rich ones? Would they not go on in the same old practice, both as corporations and as men, to acquire the strong ones which are attractive to one another to combine?

Mr. ACWORTH. No. Certainly within my lifetime the process has been going on in England of the big railroads absorbing the small railroads, which are nearly always poor. That has been going on as long as I can remember.

The VICE CHAIRMAN. But they hold out prospects, though?

Mr. ACWORTH. Sir?

The VICE CHAIRMAN. A road may be rich in prospects, if not in immediate carriage?

Mr. ACWORTH. A big railroad can afford to pay a better price for a poor property than it is worth to the owners of it. They can fit it in, and they can save a certain amount of money by better organization; they can raise new money that is required to put the property into good condition on very much cheaper terms than the poor corporation can do, and, for various reasons, they can afford to offer terms that are attractive to the owners.

The VICE CHAIRMAN. Railroad men are very often mistaken, you know, about whether a railroad is necessary or appropriate in a particular place.

Mr. ACWORTH. Yes.

The VICE CHAIRMAN. Sometimes they take the notion that the country is sufficiently occupied with railroads, and that the propagation ought to stop, and that there should not be any more railroads, and that they should be allowed to make all the money. For instance, about the time I was born railroad investors said it would not do to build a railroad where Atlanta, Ga., now is: that there was no come out in that country at all, and the proposition was, if it

was to be built at all, to run it down to Decatur or Stone Mountain, or somewhere else, and yet they have built up the strongest point in the South. And I remember a man who was the president of the Central of Georgia Railway, who was the smartest man who has ever been president of the railroad—the others all being dead or removed—and he said it would not do to build a railroad to Carrollton, and that they had built a bridge across the Chattahoochee River 50 years too soon, but I told him that they did not build it 50 years too soon, but rather 100 years too late, and if it had been built sooner it would now be blossoming like New York.

Mr. ACWORTH. Well, sir, I found an English newspaper article of the year 1842, wherein it was pointed out that England was very much oversupplied with railroads. I think they then had about 500 miles.

Mr. SIMS. He was an expert, likely?

Mr. ACWORTH. I do not know, sir; he did not put his name to it.

The VICE CHAIRMAN. I should like to ask you on another branch of the case. In any of the countries you have mentioned, and in all of your experience, has there been any legal tribunal especially existing to adjust disputes between carriers and their employees?

Mr. ACWORTH. A member of the committee asked me about Australia, and I am sorry to say I do not know as well as I ought. My recollection is that in Australia the State railroads are required to have an arbitration inside the company; that the men appoint a representative, and the employer appoints a representative, and they put in an arbitrator. I think it is something of that kind. In Canada, as I dare say you know, there is an arrangement under which before a strike may legally take place a board of inquirers come into a dispute. I expect you know the Le Mieux act.

The VICE CHAIRMAN. I know a great many resort to advisory boards and boards for investigation and report, but it occurs to me that before you can honestly say there shall not be a strike that there ought to be some legal, final, and decisive method of settling these disputes between the people, so a strike would not be desirable or necessary.

Mr. ACWORTH. We have an arrangement in England which I think you have not had. We have had various strikes and threats of strikes. We now have what since 1911 we call conciliation boards. Each railroad has a certain number of conciliation boards; one deals with the enginemen and firemen, and another perhaps deals with the track hands, and another deals with station workers, and so on, different classes. And there is a board, we will say, of six or eight members, four of them representing the men, four of them representing the company, and they meet together, and any question in reference to employment can be raised before them. They have not any powers to order anything.

The VICE CHAIRMAN. In our system of regulation, where a commission has the last word, barring an appeal to the courts as to rates and practices, where it is now acknowledged or at least held by the Supreme Court, I suppose it will be acknowledged by at least one side, if not by both, that Congress, in its regulatory powers, may do all things, directly or indirectly connected with the operation of these railroads, in interstate commerce, I mean; of course, it is in interstate

commerce. Now, what do you think, under that, of the practicability and advisability of establishing by law a tribunal, whether independent, coordinate, or the same tribunal, that shall finally pass upon all questions of the salaries, practices of the employees of that carrier, and matters in dispute with the carrier?

Mr. ACWORTH. It seems to me that an expert body constantly keeping in touch with the situation and knowing the drift of sentiment and knowing the wages in comparison with other trades, and everything of that kind, is most valuable. The point where you always come up against a difficulty is if you give that body compulsory powers it is quite easy to compel the company, but, so far as our experience goes, it is not possible to compel the men.

The VICE CHAIRMAN. You can decide that question. If they do not like it, they can retire.

Mr. ACWORTH. Yes; but I mean to say you give an award against the men, and the men thereupon go out as a body and the railroads are tied up. You can not tolerate that.

The VICE CHAIRMAN. I am not talking about continuing the present intolerable conditions of a strike that will paralyze public business. I premised my question to you by stating the case. It is a quasi public business; the Supreme Court has enunciated that it is a quasi public business. We will regulate rates and practices of the railroads between them and their customers. The Supreme Court has clearly established now that you can regulate the practices between them and their men. Why is it not possible to stop all of this foolishness by saying this is a quasi public business, society can not be interfered with, public business can not be obstructed, we will fix a determining official board here to say whether an engineer or a fireman or a president or a general manager or a superintendent is getting more money than he is worth out of this road. What is the reason that would not be consistent with our system?

Mr. ACWORTH. I think the real answer is this: Supposing the Supreme Court says there are 100,000 enginememen—or whatever the number—or 50,000, and they are not to get any more money, and they have claimed more money, and they thereupon all go out—the Supreme Court, I have no doubt, can legally, if I may express an opinion on American law—I presume it is clear that the Supreme Court can put them in jail for disobedience to an order of the court: but, as a matter of practical politics, I do not think you can put 50,000 men in jail.

The VICE CHAIRMAN. It is not necessary to say that they will go to that extremity. They are merely to finally determine the case between this railroad company and its employees. It settles that status, and if they do not like it they can resign.

Mr. ACWORTH. They will all resign in a body; that is your difficulty.

The VICE CHAIRMAN. That is a business the officials of the railroad have helped to build up, and while they have preached combinations, as you have alluded to yourself, they have taught the men to combine. But getting to the court, it deals with individuals and not bodies of men.

Mr. ACWORTH. May I give you an instance which happened in England? If, under war conditions, where it is much easier for the State to play the despot—

The VICE CHAIRMAN. We do not have any despots in this country; we are all equal and all vote for whom we like.

Mr. ACWORTH. Let me say then, for the State to give preemptory orders. We had the workmen in the coal mines in South Wales, on whom the English fleet absolutely depended for its coal. They went out; they struck. They were in a very bad temper. There was great friction between the masters and the men in that district. They went out. The Government announced that they were doing, as they certainly were, an illegal thing, in leaving their business, and the Government threatened that, if they did not go back by a certain day, legal proceedings would be taken and they would be liable to fine and imprisonment. The Government had to withdraw that notice before there was a ghost of a chance of getting the men back. The Government knew it could not put a couple of hundred thousand men in jail. The men simply said, "If you threaten us with jail we will not do any work. Now take back your threat and we will talk about it." I do not see any way you can get rid of that difficulty.

The VICE CHAIRMAN. You do not think it is practical to establish a tribunal that could settle those disputes?

Mr. ACWORTH. It is quite practicable to establish a tribunal——

The VICE CHAIRMAN. Then what good would it do?

Mr. ACWORTH. I think it would be of a very great good, provided, say, you do not try to go too far and too fast. I am sure you can not give a tribunal power to compel a whole class, in practice; you can put it into your law, but it will not work.

The VICE CHAIRMAN. I do not think the law would undertake to deal with the whole crowd in practice; I think it would undertake to deal with the individuals.

Mr. ACWORTH. But if all the individuals held together and all went out together. May I say just one thing, which is rather germane to this subject?

The VICE CHAIRMAN. There is not any doubt that the Supreme Court holds that we can prevent strikes altogether, but we do not want to do that until we provide some way to make them unnecessary and undesirable.

Mr. ACWORTH. It is easy to provide the tribunal. It is easy to give it the powers, and difficult to execute the powers.

May I tell you this, because it is quite new, as far as I know? As I mentioned yesterday in our report on Canada, which has just come out, we are recommending a system of 20,000 miles be put together under the charge of trustees, who are really public authorities, and we have recommended that one of the five trustees shall be appointed on the special ground that he is in touch with the railway employees and is a person specially possessing the confidence of railway employees. Now, as far as I know, that is a new recommendation. Whether the Government will accept it, I do not know, but it bears on the point of how to deal with the question.

The VICE CHAIRMAN. I want to recur to the point Senator Cummins talked to you about. There is a line from New York to New Orleans, let us suppose. It may be continuous or it may be combined, made up by different roads adding their lengths to one another. But you can deal with each road which may be a part of any line, or you may say each one from New York to New Orleans is a continuous road. One of those roads has either natural or temporary advantages

over the other, and it is prosperous. I am assuming a case; I have not any in mind that fit this assumption. Its competitor is not prosperous. Its management may be just as honest, but, no matter what its misfortunes may result from, it is not doing well. If we increase the rates for both, the business immediately leaves—well, if you increase both the one which does not need the revenue gets unnecessary profit, while the other may get what it needs, but if you increase it alone, without increasing its competitor, then the business leaves it and goes to its competitor, and it is in worse condition than it was before.

Now, if the figures which Senator Cummins stated were true, and I am not stopping now to discuss whether they are or not, there are two views about it that 75 or 80 per cent of the business is done by roads which are prosperous and do not need any help and only 20 or 25 per cent is done by roads which are weak and do need help, although they may be more numerous than the other bunch of roads, is it right to permit the roads doing 75 per cent of the business to exact from the public hundreds of millions of dollars that the roads do not need in order to enable the roads that are not doing well to pick up some revenue or ought we not to find some other means temporarily to tide them over?

Mr. ACWORTH. Yes, sir. I would be very much inclined to agree if it were a case of 80 per cent.

The VICE CHAIRMAN. That is the assumed case, and plenty of men say that is true.

Mr. ACWORTH. Well, if it were true, it might be cheaper and not unreasonable to help the 20 per cent.

The VICE CHAIRMAN. Probably if you had associated with myself and Senator Cummins as much as you have with your railroad conferees, you might be more doubtful yourself about the position, but there are plenty of men who think those figures are approximately correct; that there are at least two-thirds of the roads that are prosperous. Now, you have heard of business men who really were in financially bad condition—if they had let it be known what their condition was they would be bankrupt—but they kept a stiff upper lip and tided over the troubles and got rich, or simply realized on their assets and remained rich. I will suggest to you that these railroads, by long campaign, by a year or two of calamity talk about the wretchedness of their condition, have scared capital and have put themselves in worse condition than they ever would be, but, be that as it may, we are simply assuming the figures. Now, it is a practical question if some of the roads, leaving out all proportionate figures, if some of the roads are doing well and others are not, is it necessary to permit some of them to tax the people unnecessarily in order to help the others or should we not find some other way to do it?

Mr. ACWORTH. It seems to me it all depends on the balance.

The VICE CHAIRMAN. Then go on the assumption that I make. Come back to the assumption that Senator Cummins and I advanced. Say three-fourths of the business of the country is done by roads that are prosperous.

Mr. ACWORTH. Prosperity meaning so good a dividend that they are able to attract as much new capital as they require?

The VICE CHAIRMAN. I am not talking about how big the dividends may be.

Mr. ACWORTH. I want to understand what we mean by prosperous.

The VICE CHAIRMAN. That is not necessary. You and I might differ about what that is. But if we conclude that two-thirds of them do not need the help right now and that the other one-third does, assume for the minute that you are wrong and I am right, assume a case without reference to the opinion of either of us, because there are more folks who believe in my assumption than do in your idea, now assuming that, is it right to tax the public, to permit these roads to tax the public, to increase their wealth that they do not need when we might find some other way to tide over those who are about to break?

Mr. ACWORTH. Well, sir, it is really very difficult for an Englishman to answer, because to talk of taxing the public for a railway rate—

The VICE CHAIRMAN. That is what the railroads are permitted to do.

Mr. ACWORTH. I mean it does not seem to me that it is anything like taxation. The railroads have got a commodity to sell, and they ought to be allowed to sell it at a price that leaves them a fair profit.

The VICE CHAIRMAN. Strike out the word "tax" and say "exact"—the power to exact.

Mr. ACWORTH. The power to charge?

The VICE CHAIRMAN. The power to take money, let us say, which they do not need.

Mr. ACWORTH. Let us say "charge."

The VICE CHAIRMAN. I do not care what your word is. Are you going to authorize them to take hundreds of millions of dollars they do not need in order to help a few that do need some assistance?

Mr. ACWORTH. It seems to me, if I may put it in the old economic form, that you ought to allow everybody to charge such a rate as is high enough to keep in business the last man that the public requires. If you remember when we used to read in the old political economy textbooks about rent, they said rent was the difference between the amount that it was necessary to give to the man who cultivated the worst field of wheat that was required to supply the public with wheat and the value of product of the best field.

The VICE CHAIRMAN. Your idea is that it is proper and necessary to preserve the relations of all; that if one is rich or the other is poor, whatever is done in the way of legislation you would keep things that way?

Mr. ACWORTH. I would put it this way: That it can not be right to prevent the poorest railroad that the public require—if a man builds a railroad that the public does not want he must take the risk—but if the public wants the railroad it can not be right to refuse the man who supplied it a decent commercial return on the article he is selling to the public. Now, if somebody else can sell more articles, or can produce them more cheaply, and so can make a larger profit; that is his luck, and he gets the balance.

The VICE CHAIRMAN. That would be true of two merchants if the Government did not undertake to regulate, but there is more in this than you seem to talk about. The idea in this thing is that the people need these railroads, especially during this time of war they have got to use them. Now, we also believe that the poorest people in this country have a right to some transportation as well as the

richest, and that a new country that has been developed and built up has the right to some facilities to build it up just as these others were done in the days of their infancy. Now, we have got to have the use of these railroads in this war. There is not any doubt about that.

Mr. ACWORTH. Yes, sir.

The VICE CHAIRMAN. The Government may be obliged to call on the weakest one, yet having undertaken to regulate these railroads the Government will hardly be willing to permit the bulk of them that are prosperous in this time of public stress to increase their charges, because some of the little, weaker ones that we need to use are in need of money. Now, in order to preserve their efficiency and continue their use and operation, at least during the time of public necessity, had we not just as well lend those little roads some money to help them to carry on the war as to lend it to our allies to fight Germany, and let them pay it back in transportation?

Mr. ACWORTH. You are asking me—I am not supposing that I shall influence the policy of the United States.

The VICE CHAIRMAN. Yes; but you are a witness, and a witness may come from St. Augustine or Patagonia, or anywhere else; it makes no difference if what he says is valuable.

Mr. ACWORTH. I will answer you frankly. I have been watching the United States railways for over a quarter of a century. I have read the newspapers; I have read a great many articles and books of professors of political economy and judgments of the courts, and I am absolutely out of sympathy with them. I do not understand this theory of having a right to regulate, meaning a right to prevent a man who has put his money into a commercial enterprise from earning a commercial return. I am frankly out of sympathy with the whole idea.

The VICE CHAIRMAN. We have heard that speech now for 20 years, ever since I have sat on the committee, that they can come in and defy the right of the Government to reach them because it is their private monopoly, utterly regardless of the fact that they are public servants, doing an interstate commerce that the Constitution says Congress shall regulate, and every solitary effort to regulate them has been fought with bulldog tenacity to the last extremity of the law. I have no doubt if all that money had been properly spent instead of fighting in the courts and before committees of Congress the railroads would have been prosperous to-day.

Mr. ACWORTH. Well, sir, all the money spent on fighting the Government would not go far in building a railroad.

The VICE CHAIRMAN. I do not think they bought any Congressmen, but they spent lots of money fixing up their cases, and they fought mighty, mighty hard, and they have made your speech time and time again. Now, if they would come in as good citizens and say, "We are Americans and subject to law, just as you are; we want to help regulate and have a right to have a voice in it," that would be another matter, but to come up boldly and say, "You have no right to regulate us because this is private property," this is a public business, and the Constitution says we shall regulate it.

Mr. ACWORTH. Do not mistake me. I was not going to argue against regulation. I believe that Government regulation is absolutely essential.

The VICE CHAIRMAN. Yet you said this was private property and you could not understand the authority of the Government to regulate that private business.

Mr. ACWORTH. No, sir; forgive me. I did not make myself clear. I can not understand that regulation is the same thing as limiting or cutting down profits. They seem to me to be two separate things.

The VICE CHAIRMAN. The law tells every man what he shall and what he shall not do. Some are in the right and some in the wrong.

Mr. ACWORTH. The law says, for example, a saloonkeeper shall only open at certain hours, etc. It does not attempt to regulate whether he shall make 20 or 40 per cent dividends out of his business.

The VICE CHAIRMAN. The proper authority could do it.

Mr. ACWORTH. It has not done it.

The VICE CHAIRMAN. Congress would not do it except in the parts of the country subject to its regulations.

Mr. ACWORTH. There are a great many businesses. You tell a factory it shall only run during certain hours.

The VICE CHAIRMAN. They regulate banking; they regulate usury; yet the railroads are the only people who come in and say, "You limit what we shall charge, yet put a minimum on what we shall do."

Mr. ACWORTH. Is not banking a fair instance? You regulate banking with great care, with much more detail than we do. Have you ever attempted to impose a limit on bank dividends?

The VICE CHAIRMAN. We govern the interests. No matter about the details. The point you made was that it was private capital and private business the Government is regulating.

Mr. ACWORTH. No, sir; forgive me. I really did not say so. What I said was—

The VICE CHAIRMAN. If the Government takes all regulation off of Judge Sims, here, and leaves him to follow his natural inclination, he could go out and get rich in 15 minutes.

Mr. SIMS. I wish I were unregulated, then.

Mr. ACWORTH. I said it should not be regarded as a necessary part of regulation to interfere with the commercial result of the operations. It seems to me banking is a perfectly fair parallel. You regulate banking; you insist on certain reserves being kept; you insist on the books being opened to the public examiner, etc.; but whether the bank shall have 10 or 50 per cent and how much of its profits it pays out in dividends and how much it puts to reserve, the bank settles for itself.

The VICE CHAIRMAN. I do not think there is any law about the railroads as to what dividend they shall declare.

Mr. ACWORTH. No, sir; but have you ever suggested that because such and such a bank is paying 20 per cent, therefore the Government ought to require it to lend money cheaper to its customers?

The VICE CHAIRMAN. And we never have about the railroads.

Mr. ACWORTH. Yes, sir. What you have done to the railroads is practically this: It is as if you had said to a bank, "You are paying 20 per cent; the market rate for a borrower is 5 per cent; you are rich and you can afford it, and you shall lend to your customers at 4½ per cent."

The VICE CHAIRMAN. We have said to the railroads only—

Mr. ACWORTH. You have reduced the rates.

The VICE CHAIRMAN. That is an argument the railroads make and none of us believe.

Mr. ACWORTH. You asked me. I believe it.

The VICE CHAIRMAN. You have a good many times taken refuge under the fact that you did not live here and did not know all these things.

Mr. ACWORTH. Lookers-on see most of the game, sir.

The VICE CHAIRMAN. You do not think it would be practicable for the Government during the war, when it is making loans, to lend to a railroad that needs money in order that the Government may use it during the war, and let the railroad pay it back in service, or any other way it can?

Mr. ACWORTH. I do not think it will have any money to pay back with.

The VICE CHAIRMAN. If the Government wanted to haul cannons and troops to send over to France to help whip Germany, it could do that much, could it not? I have in mind some of these weak railroads which run through a far better country than some of the strong ones; if they had just a little chance and would quit their crying calamity they would get to being profitable.

Mr. ACWORTH. Well, the investing public does not agree with you.

The VICE CHAIRMAN. No, sir; some of these investors have got the idea in their heads that we have got railroads enough; that we do not want to build any more; and they have stated before this committee that none would be built in the future except what the existing railroads would build.

Mr. ACWORTH. I think that is true.

The VICE CHAIRMAN. I do not. I think legislation is going to try to turn the other way so that some more will be built by somebody. I know of a thousand or two thousand miles which ought to be built, yet these existing railroads surround that country and say, "No, you do not need any railroads there."

Mr. ACWORTH. You know what we have done in England about the war question. Our Government, from the day the war broke out, assumed the whole responsibility for the railroads, and did it this way: They said, "We will guarantee to each company the same net income that it was earning in the last complete year before the war," and therefore whether the railroad makes a profit or makes a loss, as compared with 1913, makes no difference to the company, the Government takes the profit, if there is any, or pays the difference, if there is any.

The VICE CHAIRMAN. We have got a statute in the books, one as old as that, which authorizes the President in time of war to seize all the railroads and operate them during the war; but we have met with two contentions in trying to make that practical. The carriers themselves want to make various provisions about how they shall be paid and when they shall be paid, and all that, while the men running the roads want certain provisions to look after their interests, and all that, you know, and in the midst of the confusion I thought of this proposition that I want to ask you about: Instead of seizing the roads under our constitutional power, why is it not more practical and more satisfactory to everybody to authorize the President just to order the officials of a railroad, without seizing

the road by the Government, to render what practical service he wants, in preference to other service, and pay for it.

Mr. ACWORTH. Of course, I could not attempt to judge. I take it the war service in the United States either will be a very small percentage compared to what it is in a country like England, where we have got practically everybody—

The VICE CHAIRMAN. That would not justify taking over the roads, would it?

Mr. ACWORTH. You mean here?

The VICE CHAIRMAN. Yes.

Mr. ACWORTH. I mean to say it is not obviously so urgent to deal with it. You can deal with it on a basis of paying. I do not think that is going to be your difficulty. Your difficulty, it seems to me, is going to be this: You are going to divert traffic from one road to another in order to get it through as quickly as possible. You may deprive one railroad of the traffic that they normally would have had, and you may put it on another railroad. You may take it out of Peter's pocket and put it into Paul's, and Peter will grumble, and justly. That, I think, is going to be your difficulty—adjusting the fair payment between one railroad company and another—if you, from the outside, deliberately upset the previous course of traffic.

The VICE CHAIRMAN. We already have a provision in our act to regulate commerce to authorize the President in time of war to order the railroads to do military service in preference to the service of other people. That is a bare statement of it without going into all the details or making provision for adjusting the thing, and it did occur to me that it was far preferable to merely authorize the President to command a particular service and pay for it than to commandeer the entire system of railroads, especially in view of your opinion that the service required will not be so great in this country as it will be in England and France.

Mr. ACWORTH. But the difficulty is not to pay for the service but to compensate the man for the service you have not given him a chance for rendering and earning the money for.

The VICE CHAIRMAN. They have not complained about that.

Mr. ACWORTH. It is going to be the man who has lost on the traffic, and therefore his revenue, who has the best ground to complain, as I see it.

The VICE CHAIRMAN. Yet if we were to take over the railroads without specifically providing for all of those details, the next generation would never be done paying for depriving them of all this service.

Mr. ACWORTH. Our system works as simply and easily as possible. There was never an argument between the Government and the railroads. Wherever the balance is one way or the other, the Government just pays it over. There is an audit going on all the time.

The VICE CHAIRMAN. You have got all the details fixed?

Mr. ACWORTH. They do not fix them at all.

The VICE CHAIRMAN. They do not have to?

Mr. ACWORTH. You fix nothing. You merely say that a given company had in 1913 a revenue of a million dollars. Now, in 1915 it has got to have a net revenue of a million dollars. Supposing it

receives over the counter for doing service \$8,000,000 and it spends \$7,000,000 in doing the service, it has got its million.

The VICE CHAIRMAN. Then you do not allow for any speculative profits that the railroad might claim it could have made under other conditions?

Mr. ACWORTH. Certainly not. You draw a line; you say there is your figures, now there is what you are going to receive. If the balance, after paying working expenses, gives you just that, nobody pays anything.

The VICE CHAIRMAN. Sir, on behalf of the committee I want to assure you that we have enjoyed sincere pleasure in your visit and in hearing your luminous statement on the subject.

Mr. ACWORTH. May I end, as I began, by saying that I am very grateful to the committee for their great courtesy in holding a special session in order to accommodate me?

Mr. SIMS. Let me ask you a question. Do the German railways make a charge for carrying the mails and keep a separate item, or are the mails carried just like your English troops are now carried, without charge?

Mr. ACWORTH. The mails in Germany are carried under the same arrangement that existed with private companies before the State took them over, which is, broadly, that the post office is entitled to a certain amount of accommodation on every train free.

Mr. SIMS. What I want to know is this: Does the Government as a government, put part of the general revenues into the railway funds for carrying the mails?

Mr. ACWORTH. Broadly, not. I do not think it does pay anything.

Mr. SIMS. You spoke about earning \$50,000,000 or \$60,000,000 on the average. That means also in addition to the \$50,000,000 or \$60,000,000 free service for carrying the mails?

Mr. ACWORTH. In addition to that the railways render a large amount of free service to the post office.

Mr. SIMS. In this country it would probably increase the receipts to the Government out of railway operation. Do you know what that amount is?

Mr. ACWORTH. I do not think any figures have ever been taken out. The same thing happens in France. The French railways carry the mails free.

Mr. THOM. Mr. Chairman, may I make a suggestion. Mr. Acworth has testified from a paper which I hold in my hand, entitled "Historical Sketch of Government Ownership of Railroads in Foreign Countries," by W. M. Acworth. I would like with the permission of the committee, to insert it in the record.

The CHAIRMAN. How many pages are there in that?

Mr. ESCH. There are 60, I should say.

The VICE CHAIRMAN. Does that contain the same matter that you have gone over in your statement?

Mr. ACWORTH. My statement in chief was picking out the salient points of this paper.

The VICE CHAIRMAN. Is that the same matter that Mr. Thom holds in his hand?

Mr. ACWORTH. Yes, sir.

The VICE CHAIRMAN. The reporter will insert the pamphlet in the record.

(The pamphlet referred to by the vice chairman will be found printed in full on p. 1215.)

Mr. ACWORTH. Mr. Chairman, a question was asked me yesterday about our Canadian report—I have forgotten just which member of the committee asked it.

The VICE CHAIRMAN. Do you think we had better print all of that or just certain divisions of it?

Mr. ACWORTH. That is entirely with the committee, Mr. Chairman.

The VICE CHAIRMAN. We do not know much about it.

Mr. ACWORTH. I do not want to make any suggestions. It is a volume of 200 pages, of which about 100 is appendix.

The VICE CHAIRMAN. Is it capable of such subdivision as that we can print the more valuable part and exclude the other?

Mr. ACWORTH. I think if you were to print any part of it—if it interests the committee to have anything printed—you should print the part that deals with the principles, and not necessarily print the statistics as to the length of the Canadian railroads, etc.

The VICE CHAIRMAN. Will you hand that part of it to the reporter?

(The pamphlet referred to by the vice chairman will be found printed in full on p. 1263.)

The VICE CHAIRMAN. The committee will now adjourn subject to the call of the chairman.

(Accordingly, at 11.45 p. m., the joint committee adjourned subject to call of the chairman.)



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## **APPENDIX A**

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### **HISTORICAL SKETCH OF GOVERNMENT OWNERSHIP OF RAILROADS IN FOREIGN COUNTRIES**

**By W. M. ACWORTH**



## HISTORICAL SKETCH OF GOVERNMENT OWNERSHIP OF RAILROADS IN FOREIGN COUNTRIES.

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### INTRODUCTORY.

On the 24th of May, 1830, the first few miles of the Baltimore & Ohio Railroad were opened for traffic. Four months later—on September 15—came the opening of the whole 30 miles of the Liverpool & Manchester—a yet more conspicuously dramatic event, for not only did this line connect two of the greatest cities in the world, but a cabinet minister was killed by one of the first trains run. And so at the outset the United States and England, the two countries where capital was most abundant and most venturesome, accepted, half unconsciously, no doubt, the principle to which they have since adhered, and, relying on that spirit of individual enterprise which centuries of history had called forth and fostered, intrusted the development of their railways to the unaided energy of private citizens organized into voluntary corporations.

“The English and American maxim is,” says Mr. A. T. Hadley, president of Yale, in his well-known book, *Railroad Transportation, its History and its Laws*, “that whatever can be done without Government should be thus done. The continental principle is that whatever can be done by Government should be.” How far operating a railroad was a thing that could be done by Government must have been a difficult question to solve in the early days. For, though construction and maintenance of roads and canals had long been recognized as a Government function, no Government had ever monopolized the carriage of traffic on these highways; and at a very early stage in railway history it became clear that the owner of the road must in this case have also the exclusive right of carriage along it.

But abstract considerations are apt to go to the wall when practical questions press for instant solution. On October 4, 1830, Belgium, which had in 1815 been made by the Treaty of Vienna part of the Kingdom of Holland, declared its independence. And if independence, economic as well as political, was to be secured, if Belgium was to hold its own against Holland, if Antwerp was to be able to compete with Rotterdam, it was urgent that the great traffic route from the Rhine and the German frontier through Liege and Brussels to the Scheldt and the North Sea should be under Belgian control. A railway must be built. If built by private capital, the capital would almost certainly be Dutch. Accordingly, as early as 1834, the Belgian Parliament resolved that the railway should be built and worked by the Government. And by 1840 upward of 200 miles, the main trunk lines of the Belgian State system as it exists

to-day, were already in operation. And so to-day we have behind us three-quarters of a century of history during which the characteristics, good and bad, of State and private railways can be compared and contrasted.

#### COMPARATIVE STATISTICS.

"Most countries own their own railways." This statement, true but misleading, is often made. Bulgaria owns its railways, 1,204 miles in all. The United States has more than 200 times the Bulgarian mileage, all owned by private corporations. Bulgaria counts as a country; the United States counts as one also. According to the latest figures in the *Archiv für Eisenbahnwesen*, the official organ of the Prussian State railway administration, there were in Europe at the end of 1913, 216,396 miles, of which 116,111 (rather more than half) were State railways. There were in the whole world nearly 700,000 miles of railway, of which less than one-third were State railways.<sup>1</sup>

The capital invested in railways, according to the same authority, amounted to 208,000,000,000 marks, or \$49,547,680,000. It is not possible to work out the respective proportions of State and private capital. Suffice it to say that whereas 33 of the nations enumerated own their railways in whole or in part, the United States and Great Britain, where the railways are all in private hands, account between them for more than half of the world's total railway capital. The *Archiv* gives no figures of traffic—of work, that is—done for the public. But Mr. Slason Thompson, in his *Railway Statistics for United States of America for the year 1915* (p. 41), states that the 25 principal countries of the world have 187,530 locomotives, of which 89,668 (almost half) are in the United States and the United Kingdom, while out of 5,816,441 freight cars these two countries have 3,123,660<sup>2</sup> (a good deal more than half). On the whole, having regard to the enormously greater capacity of an engine or a freight car in the United States than elsewhere, it is probably safe to make the broad statement that two-thirds of the railway mileage of the world has been built, two-thirds of the railway capital of the world has been provided, and two-thirds of the current railway work of the world is done by private enterprise, and only the remaining third by national undertakings.

It has, however, already been pointed out that if the nations of the world were polled, great and small, and assigning to each nation one vote, as at The Hague convention, a considerable majority would be found to have decided in favor of entire or partial State ownership. The United States and the United Kingdom are the only nations of the first rank who own no railways. Spain, Turkey, and Greece, among the less important European countries, are in the same position. Every other European nation and most of the extra European countries own some, at least, of their railways, though several of them, and those not the least important—British India, for instance, and Holland—have handed over the working of the national railways, partly in the case of India, wholly in the case of Holland, to private

<sup>1</sup> The exact figures are 690,138 and 225,914 miles, respectively.

<sup>2</sup> These figures take no account of the freight cars in the United Kingdom, estimated at 500,000 as a minimum, which are in the service of the railways but the property not of the railway companies but of private individuals.

companies. Mexico is set down in the Archiv as owning its railways; but, in fact, the Mexican Government is not the owner but only the majority shareholder, a shareholder who, as long as Mexico was an organized community, was content to vote the election of a board of directors put forward by the private minority holders of the railway stock.

#### CHANGES OF OWNERSHIP AND THE CAUSES.

Another point should be noted. There is no country which has throughout its history kept its whole railway system in its own hands. In Belgium in 1860 the State lines were less than half of the whole mileage. In 1870 the State proportion had fallen to little more than one-quarter. Prussia at the same date was still a country of mixed ownership, as the Scandinavian countries are still. But after the war with France in 1870 Belgium began to buy up the private companies, and Bismarck inaugurated a new policy in Germany. He attempted to acquire the private lines for the new German Empire. Foiled in this attempt by the local particularism of the separate States, he carried through in Prussia a thoroughgoing policy of nationalization; and his policy was followed by the other German States within their own jurisdiction. To-day private ownership in Germany is almost extinct, and the railways in each separate State of the Empire are the property of that State. Germany's example was contagious. In recent years the Russian Government has bought out a good many companies. Austria has carried the same process even further. Belgium has acquired all the private lines of serious importance. In 1898 Switzerland nationalized its railways. Italy did the same in 1906; Japan in 1907. Last, but not least, in 1908 the French Government took over the Western Railway, one of the six great systems among which France had been distracted since the beginning of its railway history. Even though, on the other hand, within the same period Brazil and several of the Central American States sold to private companies—mainly as an available asset to satisfy clamorous creditors—railways which they had owned, it is evident that the idea of nationalization has been in the ascendant in recent years. How far does history help us to explain the fact?

President Hadley wrote in 1886:

The motives which have led governments to extend the sphere of their business activity have been three:

1. To increase their own political influence.
2. To make up for the lack of private enterprise.
3. To avoid the abuses incident to private management.

Thirty years have elapsed since that was written, and in the light of subsequent experience perhaps the case may now be stated as follows:

Governments go into the railway business for three reasons:

1. For political reasons. These reasons may be either external or internal. External reasons are to obtain control of an instrument of war that can be used either for aggression or for defense, or to prevent the control of this instrument by capitalistic subjects of another possibly hostile power; or, again, to be able to use the railway tariffs as an auxiliary in support of the policy embodied in the customs tar-

iffs of the country. The main internal reasons are either to unify the nation or to centralize authority or to obtain new sources of revenue independent of the taxes voted by Parliament.

2. To make up for the lack of private enterprise.

3. With the idea of procuring for their citizens better conditions—lower rates, greater facilities, more impartial treatment, etc.—than private enterprise has given or is expected to give.

It would require a volume to tell in full the events which led up to nationalization even in any one country, to enumerate the various reasons, and to estimate the comparative value to be assigned to each. But the outline of the story can be briefly told.

### NATIONALIZATION IN PRUSSIA.

Prussia, the leading instance of State ownership, as being at once the largest and usually regarded as the best example of an efficient national railway system, must be dealt with first. At a later stage in this paper we shall have to consider two questions of first-rate importance:

1. Are the Prussian railways really efficient when judged by the standard of comparable private undertakings; and

2. Assuming for the sake of argument that the Prussian railways are efficient, is their efficiency under an autocratic government any ground for expecting that national railways would be equally efficient under the democratic form of government that exists in the United States and the United Kingdom?

For the moment we are only concerned with the history of the nationalization policy inaugurated by Bismarck.

When railways first came into existence Germany was only a "geographical expression." Each State—there were some two score of them—was practically an independent sovereignty. At the outset several of the most important States of the second rank—Bavaria, Wirtemberg, Baden, and Saxony—followed the example of Belgium.

The Grand Duchy of Mecklenburg offers a curious example of vacillation. At first its railways were in private hands; then they became the personal property of the grand duke; then, in 1878, just at the time when Prussia was nationalizing its railways, they passed back into private hands; and finally, in 1890, they were acquired by the State. Speaking broadly, one may say that in the richer and more commercially developed parts of Germany the railways were in private ownership; in the more backward agricultural districts they were in the hands of the various State governments. This is well exemplified by the history of the Kingdom of Prussia.<sup>1</sup> At an early date private railways were constructed in Westphalia, along the Rhine, and connecting the Rhine and Hamburg with Berlin. But private enterprise hesitated to build railways over the poor country from Berlin eastward, and the State had to undertake the task. So that almost from the beginning Prussia had experience of State railways. Then, after the war with Austria, in 1866, Prussia annexed Hanover, Hesse-Cassel, and other smaller States, and so

<sup>1</sup> The King of Prussia is, under the constitution of 1870, also German Emperor. But Prussia still remains a separate State. It is much as though the governor of the State of New York was always also President of the United States. But New York is, in population, less than one-tenth of the United States. Prussia is three-fifths of Germany.

entered into possession of a considerable additional mileage of State railways.

Then came the war with France in 1870, resulting in the unification of Germany under the leadership of Prussia. And Bismarck, in order to cement together the newly formed Empire, attempted to acquire all the railways of Germany for the Empire as one single unit. But the feeling for State rights, especially in the south, was too strong even for Bismarck. The Kingdoms of Bavaria and Saxony replied to the Prussian proposal by promptly taking into their own hands such private lines as existed in their territories. Foiled in this attempt, Bismarck determined at least to nationalize all the Prussian railways. Probably he had a stronger case for his action than has ever existed at any time in any other country. The private systems were comparatively small and of very different financial strength. The shape of Germany, the fact that traffic passed in all directions over its frontiers, the fact that it possessed no dominating central city such as Paris or Vienna or London—all these causes had resulted in a condition of what might be called railway anarchy. There was no uniformity of tariffs, scarcely even of operating regulations and conditions. While traffic from abroad was attracted to roundabout routes by reduced rates often accompanied, it was alleged, by secret rebates, the local rates were high, and the exchange of traffic between two neighboring systems was actually discouraged.

In the session of 1879 the ministry submitted to the Prussian Parliament an elaborate memorandum in support of the policy of nationalizing the railways remaining in private hands.<sup>1</sup> It marshaled with great skill, and applied to the special case of Prussia, all the familiar arguments in favor of railways nationalization. It began by emphasizing the importance of railways for military purposes—it is interesting to observe that the "military" note is struck hard at the outset—and for the development of trade. It went on to declare that various abuses were inseparable from private management. These abuses it described as (1) the existence of numerous concerns of doubtful solvency and restricted capacity of service, (2) abuse by the concessionaires of their privileged position, (3) opposition to desirable reforms, (4) complicated and arbitrary variations in their methods of organization, (5) chaos of tariffs, (6) quarrels and waste resulting from the fierce competition of numerous separate administrations.

Perhaps it is desirable at this stage to bring the allegation that all these abuses are inseparable from private management to the test of nearly 40 years of subsequent history and to deal with them seriatim as follows: (1) There are no concerns of doubtful solvency and restricted capacity among the private railway companies of France, and none of more than trifling importance in England. (2) Appears to mean that a company strives to gain an adequate net revenue before it will reduce its rates, which is true. But as the Prussian memorandum lays down in the strongest terms the obligation of a State system to do the same thing, and as the Prussian Government has for many years offered an unyielding opposition to any reduction of rates, while it has extracted from passengers and ship-

<sup>1</sup> Begründung des Gesetzentwurfes betreffend den Erwerb mehrerer Privat-Eisenbahnen für den Staat. Abgeordneten Hauses Verhandlungen Session 1878-1880, Actenstück, No. 5.

pers a net revenue, which, after paying interest in full of the railways' debt, yields in normal times a sum of some \$50,000,000 toward the general expenses of Government, the abuse, if it be an abuse, does not seem to be confined to private railways. (3) In answer to this charge it is sufficient to say that it is the private railways of England, France, and the United States which have led the world in improvements, while it would be difficult to mention a single reform for which the world is indebted to the State railways of Prussia. (4) As has been said, had this charge been confined to the private railways of Prussia, there was a considerable foundation for it. But it applies neither to France, England, nor the United States. In all these countries the private companies have worked out among themselves uniform codes of rules in reference to operation, construction of equipment, interchange of traffic, and everything else required to avoid interruption of through service. (5) As for chaos of tariffs, the French tariffs are simpler and more logical than those of Prussia, and for all ordinary traffic they are uniform throughout the whole of France. Perhaps the most scientific tariff in the world is that which for very many years has ruled in the trunk-line territory of the United States with its simple and easily intelligible New York-Chicago basis. (6) As for "quarrels and waste," quarreling is only a bad name for competition. Competition may or may not be a good thing. But it is not inseparable from private ownership. The French companies have, with negligible exceptions, never competed with one another, while the English have in large measure ceased to do so. Competition would probably have much more largely diminished in the United States also had not the deliberate policy of Congress been to keep it alive. So far as competition implies waste—that is, the expenditure of money that in the absence of competition would not have been spent—one can not have omelettes without breaking eggs. Prussia has abolished competition. Her railway accounts give us no reason to think she has thereby abolished waste. But with this point it will be necessary to deal hereafter.

To return to the memorandum. The Prussian ministry go on to say that as early as 1873 a special commission had reported that a universal State system should be regarded as the ultimate aim to be sought. They then go on to set down the advantages of a single unified management. These they summarize as follows:

Avoidance of the construction of competing lines.

A reduction of the numbers of officers and staff and of the amount of correspondence.

Unification of tariffs and train schedules.

Simplification of dealing with damage claims.

Provision of interchange stations.

Better use of equipment.

Avoidance of duplications of service and of roundabout routing of traffic resulting in higher operating costs and consequently higher rates.

It is the duty of the State, says the memorandum, to secure to the public rates which shall be low, steady, and uniform. It is also important to the State that the railway tariffs should correspond with the fiscal policy of the country and not be allowed to neutralize the customs tariff. Assuming, then, the memorandum goes on to say.

that the railways of the country must be in a single hand, this object may be attained in four different ways: (1) A single private company may both own and operate, (2) a private company may operate the lines which the State owns, (3) the State may operate all the private-owned companies, (4) or, lastly, the State may both own and operate the whole system. And it is for this last solution that the memorandum declares. Confidence is expressed that the zeal of the staff will suffice to render unnecessary the stimulus of competition. The State, it is said, having no shareholders greedy for their annual dividend, can afford to take longer views than a company. But it must continue to charge rates sufficient to cover expenses, interest, and sinking fund and the "current expenses of the State." Whether this meant what it said, or whether it only meant the liabilities of the State in its capacity as railway owner, it is impossible to decide.

This much, however, is certain. The act as it passed the Prussian Parliament, contrary to what had generally been understood during its progress, contained no express provision that railway revenues should be used only for railway purposes. And ever since the railways have been, to use the favorite phrase of domestic critics, "the milch cow of the treasury."

On the whole, it is absolutely clear that, though there were considerable abuses of private ownership in Prussia, and though the desire for unification of management both from the commercial and the operating point of view was not without weight, the main reason for Bismarck's action was of a political nature. It is in harmony with all Prussian history that the importance of military considerations and the necessity of making public control paramount in the life of the country should weigh above all other considerations with a Prussian statesman; and after the war with France and the creation of the German Empire these considerations might be expected to have even greater weight than at any other time.

#### SWITZERLAND.

Were it not that the scale is so disproportionate as to make a comparison almost laughable, for the railroads of the United States earn as much money in two days as the Swiss railway system in a twelve-month, Swiss history would be a stronger argument than most that are put forward for the nationalization of American railroads. Switzerland has owned and operated its railways for more than 15 years. Switzerland is a democracy. And Switzerland, though the results fell very far short of the expectations entertained at the time of purchase, managed its railways, on the whole, with fair, if by no means with brilliant success, until the breaking out of the European war upset the entire life of the country.

Switzerland is a union of three nationalities—German, French, and Italian. But the German population is a good deal more than two-thirds of the whole; and naturally, therefore, German political and social theories have great influence. As early as 1891 the Swiss Legislature passed a law authorizing the purchase of one of the principal railways, the Swiss Central. But this law was defeated on a referendum by a majority of more than two to one. The movement, however, in favor of nationalization continued. In 1897 an

act for the purchase of all railways except lines of purely local interest passed the two chambers, with majorities of 98 to 29 and 25 to 17, respectively; and this time on a referendum there was a two-to-one majority in favor. The memorandum prefixed to the bill repeated the arguments in favor of State ownership in words that might almost have been copied from the Prussian memorandum which has already been dealt with. There was, however, one additional argument which apparently had as much weight as all the others put together. Swiss railway shares, it was stated, had of late years ceased to be held as permanent investments, and had passed in large measure into the hands of speculators who were not Swiss citizens, but foreigners. And this dangerous state of affairs could not be allowed to continue. It had, in fact, been found that in three out of five companies the majority of the registered shareholders—and under a law of 1895 “registered” shareholders alone were entitled to vote—were foreigners.

It is not necessary to go into the history of the purchase. Three of the principal roads were transferred to the State in 1901, a fourth in 1903, and the last, the Gotthard, in 1909. The purchase price which was fixed in every case by agreement, exceeded by about 11 per cent the estimate of the cost originally put forward by the Government. Warned by Prussian history, the act laid down categorically that the railway budget was to be absolutely and completely independent of the ordinary budget of the State. Any surpluses obtained were to be devoted solely to railway purposes, either to be used as capital or to be devoted to reduction of rates and improvement of service.

In the early days of nationalization there was a very serious increase in expenses, due partly to a more generous service, but mainly to increased wages and reduced hours for the staff. For the four years following on 1903 the cost of staff increased year by year as compared with the previous year by the following percentages: 10.16, 7.08, 9.99, 9.27. Between 1900 and 1911 the number of the staff increased 46 per cent, while wages increased 92 per cent. In 1912 a further increase of less than 1 per cent in number of staff corresponded with an increase of no less than 10.2 per cent in wages. The increase in the number of the staff was, no doubt, justified by a 25 per cent increase in road mileage, and an increase of 100 per cent in passenger traffic and of 67 per cent in freight traffic. But the rise of over 100 per cent in the wages bill upset the equilibrium entirely. The operating ratio went up from 65.53 per cent in 1903 to 71.03 in 1908. In three years, after meeting operating expenses and the charges of the debt, there was an accumulated deficit of over \$2,500,000.

The management took fright. They cut down renewals, reduced services, increased rates and fares, stopped automatic increases in staff wages, and by refraining from filling up vacancies gradually reduced the number employed. The public and the employees submitted, not without natural reluctance, and the financial equilibrium was restored. After placing to sinking fund an average of about a million dollars per annum the railways just cover interest on their debt at the rate of  $3\frac{1}{4}$  per cent. But the rosy views of the authors of State purchase have been far from materializing. They promised reductions of rates and fares, and with the great increase in traffic

density ought, one can not but think, to have been able to obtain them. The average fare was indeed reduced by  $13\frac{1}{2}$  per cent between 1900 and 1911. But freight rates were rather worse than stationary. The ton-mile rate was slightly under 3 cents a mile in 1900; in 1911, it was slightly over. The authors of the purchase further estimated that the profits to be realized would suffice to extinguish the railway debt within 60 years. In fact, the sum paid for the acquisition of the railways was \$205,493,880. And the debt at the date of the last account, with one-quarter of the period expired, so far from being reduced had risen to \$270,132.80.

### ITALY.

The history of Italian railways is much too complicated to be even sketched in outline here. An admirable summary coming down to 1884 will be found in Hadley's "Railroad Transportation." Italy has experimented with every conceivable form of railway policy. It has tried State ownership and operation, private ownership and operation, State ownership with private operation, and now for the last 10 years it has reverted to both ownership and operation by the State. The country has been hampered in its railway development by various causes—geographically by its shape and by the mountainous divisions between east and west; politically by the fact that not until 1870 did the whole of Italy become a united kingdom; and financially by the fact that the economic development is backward, the people very poor, and at least till quite lately subject to a crushing burden of taxation.

As the Kingdom of Italy gradually grew together out of its component States it was necessary to make railways to cement its unity. Further, the State was compelled to take over the liability for railways which other people had constructed. The Austrians, for example, had built railways in Lombardy and Venetia, but when they were expelled from those Provinces in 1859 and 1866, respectively, the State had to buy out the Austrian company or else leave two of the richest Provinces still subject to the domination of the hated foreigner.

Between 1866 and 1885 the bulk of the railways of the country were in the hands of the State. In the latter year, as the result of an inquiry by a commission which sat from 1878 to 1881, studied the history of the railway world in exhaustive detail and embodied its report in seven quarto volumes, the Italian railway system was handed over to two great operating companies on a 60 years' lease, terminable at the end of 20 or 40 years—the Mediterraneo and Adriatico, respectively. The essential idea was, as indeed the names of the companies imply, that one system should operate along the western coast and the other along the eastern. Each company was, either by its own lines or by means of trackage rights, to have access to the great centers—Milan, Florence, Rome, Naples—and in this way it was hoped that competition would secure adequate services and reasonable rates.

The leasing system was not a success, mainly because both the lessors and lessees took too sanguine a view of the prospects of the future. Almost at the outset it became evident that additions and improvements, especially additional rolling stock, were urgently

needed; and there were no additional net receipts to pay the interest on the capital required. Why should the Government find this money for railways not in their hands; and, on the other hand, why should the companies take the risk on so short a tenure? There was another very serious factor. The railway staff, who had great political influence, and who assert, probably not without reason, that they were overworked and underpaid, were clamoring, and in some cases even striking, for better conditions of service. And last, but not least, the rolling stock was grossly inadequate, and what there was was almost falling to pieces. In the result Parliament, with a sudden resolve to cut a knot which it could not untie, on April 22, 1905, determined to take over the railways as from the following 1st of July.

Undoubtedly, as agencies of public service, the Italian railways have been considerably improved in the last 10 years. The number of locomotives increased in eight years from 3,580 to 5,322, and the number of freight cars from 69,000 to 105,000. And the improvement is even greater than these figures would indicate, for old stock has been scrapped and replaced by new and efficient equipment, lines have been improved and doubled on a considerable scale, and the services undoubtedly much improved. But the financial results are very serious, especially for a country so poor as Italy. The demands of the staff, which the railway administration has found itself powerless to resist, have, in eight years, 1906 to 1913, implied an additional expenditure of \$18,330,440. In the same period the number of staff increased from 121,000 to 149,000, equal to 23 per cent. Per kilometer of road worked there were 9.3 men at the earlier dates and 10.9 at the later. But while numbers increased 23 per cent, cost increased 57 per cent; in other words, the average wage per employee increased 27 per cent.

The gross receipts rose in the eight years from \$78,724,416 to \$120,595,000, or well over 50 per cent, while the length of line operated remained practically unchanged. Per train-mile the increase was from \$1.41 to \$1.63 or about 16 per cent. With much greater density of traffic and a considerable increase in earnings per train-mile, one would naturally have expected a substantial improvement in the operating ratio, once road and rolling stock had been brought into good order. But the opposite has been the case. In the first year of nationalization the operating ratio was 73.4; in no subsequent year has it fallen below 79.5 per cent; and for the three years 1911-1913 it averaged 84.4 per cent. Each year shows a substantial advance in operating costs over the year preceding it. The figure in the first year of the period was \$57,885,600; in the last it is \$102,264,560, an increase of over 78 per cent.

The final result is that, whereas in the financial year 1906-7 the railways paid over to the treasury \$9,796,366 as a return on a capital of \$1,091,404,045, which is roughly 1 per cent, in the last year they only returned \$5,402,656 on a capital that meanwhile had risen to \$1,374,975,952, which is roughly two-fifths of 1 per cent. An attempt was made in 1909 to raise the rates, but the ministry failed to carry their proposals and went out of office.

How far the Italian Government is satisfied with the existing situation may be judged from a significant fact which has not hitherto received the publicity which it merits. In at least two cases

just before the war concessions had been granted to a private enterprise which was to take over a portion of the existing State railway, to build an extension with the help of substantial State subsidies, and then work on its own account both sections as one undertaking.

### AUSTRALIA.

The most conspicuous instance of railways being constructed by the State because private enterprise refused to undertake the task is to be found in the Australasian colonies of Great Britain. The Australasian population is of pure British stock, and when the necessity of railway building became manifest, as true Britishers they naturally expected private enterprise to undertake the task. But local capital was scant and England was far away. Moreover, Australasia was in the throes of the gold fever resulting from the discovery of the rich fields of Ballarat and Bendigo. And such local capital as was available was not likely to be put into railway enterprise to earn a possible 5 per cent when the gold fields offered prospects of a fortune in a few months. And accordingly as the need of railroads was imperative, the governments of the separate colonies borrowed money on their own credit and set to work to construct their own State railway systems. Once embarked on such ownership they have never gone back from it. Certain local lines have from time to time been built by private capital, but they have never been important. On the one hand neither local nor English capital has been overanxious to go into the business, and on the other the State railways have been jealous of interference by private companies. Speaking broadly, the seven separate States which make up Australasia have among them over 20,000 miles of railway owned and worked by the respective governments. And it must be frankly said that public opinion is entirely in favor of this system. No proposal to divest the States of their ownership would be listened to for a moment. And, having regard to the well-known fact that State socialism has been carried further in Australia than in any other part of the world, this is not surprising.

Whether the Australian public are really competent to judge how far they have got a good bargain may be illustrated by the following anecdote: Some years ago a distinguished railway man went from America to assume the post of chief commissioner—in other words, president—of one of the most important Australian State systems. After he had been in charge for a year or two he sent to a railway friend at home statistics showing the improvements and economies effected under his management. The friend, in acknowledging the receipt, pointed out that the figures furnished did not include the ton-miles of traffic, and therefore neither receipts nor cost could be worked out on a ton-mileage basis, and asked whether it was possible that a railway man accustomed to American methods failed to keep statistical records in this form. The answer was, in effect, as follows: "I have the ton-mileage figures. I dare not publish them. If I did publish them they would show a ton-mile rate so excessive, as compared with other countries similarly situated, where the traffic is mainly in agricultural products carried long distances, that public opinion would enforce a sweeping reduction in rates and bankrupt

the undertaking." It may be added, as proving that the chief commissioner in question had good reason for desiring to avoid a comparison, that two—New South Wales and South Australia—out of the seven Australasian State railway systems do publish ton-mileage statistics. They show ton-mile earnings of 2.20 cents and 2.12 cents, respectively. The corresponding figure for the private railways of Canada is 0.75 cent, and for the private railways of the United States 0.738 cent.

### RUSSIA, AUSTRIA, AND INDIA.

Russia, Austria, and India may be grouped together as three countries where a mixed system of State and private ownership prevails. They are all alike in the fact that political, and especially military, reasons compelled the State to make railways which private enterprise was not prepared to undertake. They are alike, too, in the fact that the tendency has swayed back and forth as between State and private ownership. Austria at one time sold to private companies a number of railways that had been built by the State. Nowadays, having bought most of them back again, it owns 80 per cent of the total. One incident of the transfer deserves to be related. The Kaiser Ferdinand Nordbahn was an old and very rich company. Its dividend for the previous five years had averaged over 12 per cent. It was taken over in 1906. In 1910 the president of the Austrian Chamber of Deputies described the result as follows:

"We have always been in favor of the State taking over the railways, but if we had been able to foresee the results of the management I assure you we would have hesitated a little longer. We are still in favor of the principle, but it does seem to us that our Government has performed a remarkable feat when it has succeeded in creating a deficit on the Northern Railway. The Government have enlisted an army of new employees; they have gone much too far in the reduction of hours of labor; instead of commercial management they have appointed lawyers to posts that require business men or experts; they have established an entirely unpracticable bureaucracy. At the present moment we are face to face with a deficit of \$25,000,000. There would be no deficit at all if the return from our railways were that which it ought to be. I repeat that absolute imbecility has characterized the taking over of our railways. We must introduce business ideas into the Government service."

Russia, too, has not only built State railways but taken over private railways. Of late years, however, the tendency seems to be in the direction of private enterprise, subsidized and closely controlled by the Government, which at the present time owns and works two-thirds of the whole mileage. In India several of the most important lines were built by private enterprise, with State guaranties of dividend for a short term. At the end of the term, when these railways passed into the hands of the State, they were leased back to the old companies as operating contractors. At the moment of writing an exhaustive investigation is proceeding, which seems likely to result in the adoption of a definite policy for the whole country. British merchants in India are apparently strongly in favor of retaining the private companies. Indian native opinion appears, so far as it is

vocal, to be in favor of State ownership, the reason being that it is thought that Indian ideas would have more influence on the policy of a Government department on the spot than on that of a board of directors sitting in London. This last argument raises a point, the importance of which we have already seen in the cases of Belgium and Switzerland. Evidently the argument against private ownership is stronger where the capital is foreign than where it is found within the country itself.

A point of importance should here be noted. It is true that the Austrian Government, 40 years ago divested itself of its railway property. The Italian Government divested itself of the operation though not of the ownership as lately as 1885. More recently, Brazil—as also other less important States in South America, Guatemala and Nicaragua—have handed over some or all of their railways to private companies. But, speaking broadly, it is safe to say—subject, however, to the possibility of an exception in the case of Belgium to be referred to later—that nowadays, a decision of a nation to acquire its railways is irrevocable. This may be taken as proving—it has often asserted that it does prove—that no nation having experienced the benefit of State ownership ever desires to go back on its decision. But the argument cuts also the other way. If the decision be irrevocable, and modern railway history seems to indicate that it is, it is also well to be quite satisfied that it is the right decision before making it.

#### HOLLAND.

One country, small but not unimportant, has not hitherto been mentioned. In Holland, though some of the most important lines were built by the State, the operation has always been wholly in private hands. For many years there were in Holland three principal companies, the State Railway Co., the Holland Co., and the Dutch Rhenish Co. In 1890 the Dutch Government made a new departure. It bought up all the lines which it did not own and it then apportioned the whole system anew between two companies representing, respectively, the old State Railway and the Holland companies, in such a manner that each company had access to every important town in competition with the other. This system, which presumably was patterned on the Italian system of 1885, has been in existence ever since. In 1908 a motion in Parliament in favor of nationalization was brought forward and defeated. A parliamentary commission to investigate the question was subsequently appointed and reported unfavorably. The public seem to be satisfied with things as they are, the passenger service appears to travelers exceedingly good, but the financial result to the State is not over satisfactory. That, however, is perhaps unavoidable. Holland is intersected everywhere by rivers and canals, which have to be kept open for drainage purposes, and they carry the bulk of the heavy traffic of the country and of the German through traffic. The railways therefore have to depend for a livelihood in the main on passenger and high-class freight. What bulk freight they get, they can only get at exceedingly low rates.

One further point may be here noted. A suggestion has from time to time been put forward in various countries where the system of

private ownership prevails that the Government should purchase one or more of the private undertakings and should run it, partly as a pattern to be followed and partly as a regulating force to control the rates charged on the private railways alongside. Some such idea seems to be implied in the recent papers published in the United States by Mr. W. W. Cook. The idea has never been carried into practical effect. It is hardly likely to be seriously taken up nowadays in any country, and under the circumstances criticism is evidently superfluous.

### FRANCE.

The railway history of France stands by itself. Nowhere is the passion for logic and the love of symmetry which distinguish the French genius better exemplified than in the history of the French railway system. The ground plan of the policy which, broadly speaking, France has followed ever since, was laid down in a law passed as long ago as 1842. There were important developments after the world crisis in 1857, and again in 1878. And on January 1, 1909, the Government by taking over one of the six great systems, the Western, upset the symmetry of the original plan. But with this exception through the whole history the original plan has stood firm. The whole country was divided up among six great companies, five of which radiate from Paris, and the sixth, the Midi, serves the extreme south and southwest. The development of the railway network has been systematic from the outset; trunk lines first, then important branches, then the less important ones, and finally in recent years a considerable development of light secondary lines. Throughout, the State has guided, subsidized, and controlled. Each company has a monopoly of its own district. So far as possible the points where the great systems meet are arranged not as in Holland, or formerly in Italy, at the great towns, but precisely at the points of least importance from a traffic standpoint. Where traffic is unavoidably competitive, as, for instance, from Paris to central Switzerland, which can be reached either by the Eastern or by the Paris & Lyons Railway, arrangements are deliberately made to prevent competition. The Government controls all rates and fares charged and all services given, and the Government approves not merely of pools but of agreements by which shippers attempting to consign traffic by the route by which railway companies have agreed the traffic shall not flow are deliberately penalized by higher rates. At a later stage of this paper more must be said of the work which the French railways have done, and reasons will be given to show that the French private companies have served their public at least as well as the Prussian State railways have served theirs. But it belongs here to deal with the history and the results of the nationalization of the Western Railway eight years ago.

For more than 30 years the French Government have owned and worked a system of lines in the central west of France. This system was not inconsiderable in mileage (1,844 miles), but its district was purely agricultural and its traffic scant. It only reached Paris over the lines of the private companies, and even when it served important towns such as Nantes and Bordeaux, it only served them by inferior

routes. The financial results were very unsatisfactory—the operating ratio over a series of years ranged between 72 and 83 per cent—but in some respects, as, for instance, admitting third-class passengers on all express trains, it gave to the public advantages which the private companies did not give.

Among the great companies much the weakest financially was the western. A large portion of its mileage was in Brittany, one of the poorest districts of the country. It did serve the town of Rouen and the very important port of Havre, but the canalization of the Seine diverted from the railway a large proportion of the valuable merchandise traffic between Havre and Paris. The French Government guarantees the dividend on the shares of all the French railway companies, and year after year the French Government had to find a considerable portion of the dividend to the western shareholders.<sup>1</sup>

Further, large new capital expenditure was needed, especially to cope with the enormous passenger traffic of the company in the suburbs of Paris. How heavy that traffic is anybody who remembers the St. Lazare station in Paris will know. The necessary capital could not be raised without Government approval; and Government approval, owing to strong parliamentary opposition, could not be obtained. Meanwhile the service was going from bad to worse, and the equipment was on its last legs. Something had to be done. Once more the knot that could not be untied was cut. And as from January 1, 1909, the Government exercised its rights under the concession, and took over the railway, continuing to pay the guaranteed dividend to the shareholders in the form of an annuity running till the termination of the concession.

The political history of the transfer is distinctly interesting. The employees on the railway itself were unanimously in its favor. And, as subsequent experience proves, with good reason. And the whole strength of the Socialist Party and of socialist sentiment was thrown on the same side. A majority was secured for the bill in both houses, though a large majority of the representatives of the districts served by the railway voted against it. The bill passed the Chamber in December, 1906. But it was hung up in the Senate for 18 months till June, 1908, and finally only passed by a majority of 3 votes, after M. Clemenceau, who was prime minister at the time, had given it to be understood that unless the bill was passed he would resign. And much as the majority of the Senate disliked nationalization, at the moment they disliked the resignation of M. Clemenceau even more. It may further be added that according to the French custom the opinion of all the chambers of commerce in the country, which are statutory bodies, was invited on the measure, and that not one single town of more than third-rate importance reported in its favor.

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<sup>1</sup> It should be noted that only 10 per cent of the total French railway capital is in the form of shares; 90 per cent is in the form of bonds which practically, though not formally, are guaranteed by the French Government. The dividend on the shares, therefore, though large in percentage—it ranges from 7 per cent on the Western and the Eastern, and 10 or 11 per cent on three of the other companies, to 13 per cent on the Northern—is not very large in total amount. Broadly speaking, the companies other than the Western more or less earn their dividends in normal times without State help.

## EXPERIENCE OF STATE OPERATION IN FRANCE.

Here in broad outline is the story of the result of the transfer.<sup>1</sup> In the five years, 1904-1908, before the transfer the gross receipts rose steadily from \$37,084,000 to \$42,145,000. In the five subsequent years, 1909-1913 (the war upset entirely the figures for 1914), the gross receipts rose from \$42,333,000 to \$48,701,000, a slightly greater rate of increase. In the five years before the transfer the operating expenses rose from \$20,796,000 to \$28,388,000, this last figure being unduly inflated by the fact that from the date the chamber voted the acquisition of the railway the staff became entirely demoralized. The first year after the acquisition the operating expenses were \$30,304,000. The next year they were \$34,921,000, and the year after \$39,454,000. In 1912 they had reached \$41,800,000, and for 1913 they fell back to \$41,478,000. In other words, to earn a net revenue increased by 31 per cent the operating expenses increased by 100 per cent. The net revenue was never below \$12,757,000 in the worst year of company rule. It fell to \$5,352,000 after the Government had been in possession four years. The operating ratio, which had risen from 56.4 to 67.8 under the company, was for the next five years as follows: 72.7, 79.9, 87, 89.4, and 85.2. It is fair here to make a qualification. The operating ratio had gone up on all the French railways between the two periods. It averaged 50.3 for the other five great companies for the years 1905 and 1906, and 58.4 for the two years 1912 and 1913. But a rise from 50.3 to 58.4 is one thing; a rise from 56.4 to 89.4 is quite another.

A main argument used in Parliament in favor of transfer from the company to the State was that the company never did, and never could, earn its guaranteed dividend in full, still less the extra dividend which it would be entitled to if earned; that the company was accordingly a mere caretaker and not interested in financial results, and did not operate, and could not be expected to operate with economy. The State, on the other hand, would have a direct interest in operating economically. That was the argument. Here are the facts: During the last 10 years of company management the State had to pay an average of \$2,894,280 a year to meet its liability under the guaranty to make up the deficiency in net operating income. During the first 3 years after the transfer the sums it had to find under the same head were \$6,753,320, \$8,875,792, and \$14,934,484, respectively. For the year 1913 the figure was \$14,752,237.

Nor do these deplorable financial results tell the whole story. The service to the public was absolutely demoralized. There were several very serious and numerous smaller accidents, and the staff and the public got so frightened that the express trains on the main line, already the slowest in France, were decelerated down to a timing

<sup>1</sup> The figures given above are from official sources. The story is mainly taken from an article by Pierre-Leroy-Beaulieu, himself a Deputy, in "The State in relation to railways." (P. S. King & Co., London, 1912.) See also Colson in "Revue Politique et Parlementaire" for November, 1910; December, 1911; May, 1913; and May, 1914. The railway newspapers all over the world were full of the story in 1909 and subsequent years.

M. Colson, an engineer by training, was formerly head of the railway department of the ministry of public works, and is now president of the section of the council of State (a body partly executive and partly judicial), which deals with all questions concerning transport by rail or road or water. His book, *Transports et Tarifs*, is a recognized classic on its subject.

that had been abandoned as inadequate in 1896. In addition, a number of trains were suppressed altogether. Punctuality went to the winds. Commuters on the system in the suburbs of Paris were compelled by their employers to live elsewhere because of the unpunctuality of their arrival at their work. As for the service in general, one figure will suffice. Compensation for accidents, loss, and damage averaged some \$400,000 or \$500,000 a year in the last days of the company. In 1911 the figure was \$2,045,291. The minister of public works himself publicly criticized the State administration as "a frightful fraud." And the Senate passed unanimously a resolution beginning: "The deplorable situation of the State system, the insecurity and irregularity of its workings"—

M. Leroy-Beaulieu gives the reasons for the "deplorable situation" as follows:

In the first place, it is the abuse of formalism and red tape, with all the delays which follow and which are directly in conflict with commercial needs. In the second place, it is the lack of stability. The director and all the chiefs of the service change at the will of the ministers, whilst in the private companies the higher personnel is maintained a long time, fulfilling the same functions. It is next the political influence which enters into the choice and advancement of the personnel. It is, lastly, the lack of discipline which also results from the political influence at work. From the electoral point of view, the lower staff, being much more numerous, will always have much more power than the superior staff. It is always on the side of the former that many deputies will be systematically ranged. Above all, it is impossible to be at once controller and controlled. If one of the great French companies under private management renders poor service, the public opinion is not slow to move the public power, and as this has the means to bring pressure indirectly but in many ways upon the companies, they are led to reform. On the contrary, when complaints are made against the State itself, the administration, irresponsible, does not listen. Rather, it seems indignant that particular individuals or even large associations should dare to find that all is not perfect. "I have not seen without a certain astonishment," said the minister of public works in the chamber, "the chambers of commerce criticize the actions of the State in its (their) reports upon the railways." The same minister has dismissed an employee from his office who was at the head of a section of a passenger line which emitted protestation against the delays on the western State service in the Paris suburbs. When the minister was reproached in the Senate, he declared himself ready to do the same again. One may see how dangerous to the liberty of citizens the extension of the industrial régime of the State would be, where the number of functionaries would be indefinitely multiplied and where they would no longer have the right to complain.

From all points of view the experience of State railways in France is unfavorable, as was foreseen by all those who had reflected upon the bad results given by the other industrial undertakings of the State, such as the telephones, matches, and many others. The State, above all an elective administration, can not be a good commercial manager. It works expensively, and is powerless before its employees. The experience which we have recently gained has had at least one result. It has provoked a very lively movement, not only against the repurchase of the railways, but against all extension of State industry. This result seems to me fortunate. I hope this opinion will be maintained, and that not only we, but our neighbors, may profit by the lesson of these facts.

Mr. Leroy-Beaulieu gives examples of what has happened under the various heads. "As for formalism and red tape," on the eve of the handing over of the railway to the State there were 1,526 employees in the central office. Within three years the number had increased to 2,587. "The single service of the accountant general was increased by 70 persons directly after the repurchase." And this was due partly to political pressure and partly to excessive red tape. For example, in the Caen division the preparation of the pay

sheets, which under the company took 9 persons 3 days=27 days under the State administration took 12 persons 6 days=72 days. "According to official documents, there are not less than 96 persons receiving a salary of more than \$1,929.52 in the State system" as against 33 on the system of a neighboring company of much the same mileage, but with much higher receipts. In the five years from 1908 to 1912<sup>1</sup> the total expenditure increased \$10,573,770, of which \$8,412,707 were for salaries and wages. In 1908, out of every \$19.30 of receipts, the company paid \$7.24 in salaries and wages. In 1912 this figure was \$9.70. The comparative figure for the five great companies is only \$5.70. In 1910, per \$192,952 of receipts, the State railways employed 235 persons, the private companies 174.

Again, as the result of the great strike of October, 1910, the Chamber of Deputies voted a large all-round increase in the wages of the staff. Naturally, the staff thought there were shorter cuts to increases of wages than hard work. As a sample of want of ordinary business management on the financial side, the budget commission of the chamber reported that it could not draw up a proper estimate for 1912 from lack of the necessary accounts. "The statements addressed to the budget commission by the administration were manifestly inaccurate. \* \* \* The great part of the statements of receipts and expenditure were found to lack any sufficient justification. Thus, as regards the expenditure upon personnel, the tables accompanying the statement only stated the numbers of workmen and staff and the amount of their salaries in round figures. \* \* \* We wrote for further statements, more particularly the numbers of the personnel. \* \* \* The minister replied (three years after the railway had been taken over) that the enumeration of employees had not yet been made. \* \* \* This example suffices to show the trust that may be placed in the other parts of the budget estimate." This is not the opinion of an outside and unfavorable critic. It is the report of a committee of the chamber of the same political complexion as its predecessor, which voted for the purchase, based upon a draft drawn up by a deputy well known as an advocate of State ownership.

One story given by M. Leroy-Beaulieu is so striking as a sample of the highest quality of red tape that it deserves to be given at length. It is from a letter of a station master read in the Chamber of Deputies:

In the time of the Western Co. we station masters had orders to use the rolling stock as quickly as possible and to send to a given station all that we did not ourselves require. Under the State all is changed. Every station master is forbidden to load any wagon without the orders of the distribution bureau of the district. This bureau is, as is well known, a new creation, specially designed for the purpose of finding situations for so many more bureaucrats. Recently, having received two wagons loaded with horses, accompanied by an order to send these wagons to Caen after they were unloaded, I thought to do well by loading in these two wagons 200 sacks of grain, which had been waiting in the sheds for several days to go to Caen. But, alas, I did not know the bureau of distribution. The next day I saw my two wagons return, and I received at the same time an order to unload them. I was reproved into the bargain for excess of zeal. I had to obey the order. That evening I sent the wagons empty to Caen. Next day I received two others, also empty, in which to load the grain.

<sup>1</sup> 1912 figures are budget estimates only.

## THE LESSONS OF FOREIGN EXPERIENCE.

Such is an outline history of the introduction of State ownership in the less important half of the railway world. What lessons has it to teach for the more important half—the United States and the United Kingdom? Evidently in these two countries it will not be suggested that State ownership is necessary for political and military reasons. The consciousness of political unity needs here no artificial stimulus. The experience of England since the present war began has sufficiently demonstrated that a number of independent and often competing private companies can be welded together at a moment's notice into a homogeneous system and operated from the moment when war is declared, with absolute success as an organic whole, under public control, on public account, for the public service.

Nor will it be suggested that in these two countries private enterprise has fallen short of meeting the public requirements. On the contrary, that England is adequately provided is admitted on all hands. And if, as is doubtless the case, the United States still need, and will continue to need, fresh railways built, past experience, which shows that in no other countries have railways been pushed so boldly in advance of population as in the States, gives every reason to suppose that private enterprise will be able and willing to provide them. And it may be added that the country which comes next in this respect to the United States—far in advance of the English colonies of Australasia, with their exclusively State systems, and of Russia or India, with their immixture of State ownership—is Argentina, also a country wholly developed, till quite recently, by private companies.

Railway history conclusively refutes the idea that State ownership promotes railway development. If we consider countries where the railways are already making a reasonable return on the capital, what do we find? Belgium has notoriously failed to keep its railways abreast of its rapidly growing trade. The Prussian Government has consistently for a generation past forced the enormous coal and iron traffic of Lorraine, Luxemburg, and Westphalia on to the waterways by refusing to build the new lines necessary to cope with the traffic by land. American shippers sometimes complain of shortage of equipment. But these complaints in times of worst congestion are not more bitter than those which go up regularly every autumn from the coal operators of the Ruhr Revier, the most important coal field in Prussia. In Australia the managements of the Government railways have boldly defended themselves in times of bad congestion by claiming that the railways can not afford to keep sufficient equipment to cope with maximum demand. In the great Empire of India, with a teeming population of 315,000,000 spread over an area nearly two-thirds that of the United States, a population which though very poor is also very industrious, there are only some 36,000 miles of railway. That more railways and improvements of existing railways are urgently needed is admitted on all hands. Nor is it denied that they would pay their way. But the Government refuses to allow private capital a free hand. A private company may build branches as feeders of the existing trunk

lines on strictly regulated terms. But that is all. And yet the Government itself can only find a few million pounds per annum for a work in which scores of millions could be profitably employed. The Dominion of South Africa, with a white population of a million and a quarter, has a State railway system of some 8,000 miles. In the much newer territory of Rhodesia, alongside, company enterprise has already provided 2,000 miles of railway for the service of a white population of 32,000.

The reason is obvious. A railway company exists for a single end. If an extension offers reasonable prospect of financial success, and if capital can be raised on reasonable terms, a company will always build it. Even if success is problematical, ambition and the desire to forestall a possible intruder will usually turn the scale in favor of a forward policy. But a finance minister is in quite a different position. Calls upon him for money come in from a dozen different directions. The army, the navy, education, irrigation schemes, social betterment, and 50 things more, all press their rival claims. The money is limited. New taxes do not conduce to popularity. The budget has to be made to balance, and the railways go short like all the other claimants.

The experience of the last few years in the United States has, it must be admitted, shown that, under present conditions, private capital is not being found in sufficient quantity for extensions and improvements which are urgently necessary. And it has been argued therefore that the State will be compelled to come to the rescue by taking over the private undertakings bodily. But this is scarcely practical politics. To suppose that serious statesmen would, for this reason only, decide on a step so serious as railway nationalization, is to suppose the impossible. Taking over a quarter of a million miles of railway, with \$16,000,000,000 net capital and over 1,800,000 employees, may be a good thing or a bad thing; but it is undoubtedly a step the seriousness of which can hardly be exaggerated. To compare it in importance with the alternative of allowing the existing companies to raise their rates by an average of a mill per ton-mile, which would make all the difference between poverty and affluence, would be almost farcical.

The argument for State ownership in the United States or the United Kingdom can therefore be based only on the claim that the substitution of Government for private ownership of the existing lines would, on the whole, secure better public service. A distinguished English authority, Sir George Gibb, has, in fact, put the question precisely on these lines. He has contended that, in Anglo-Saxon countries at least, it was entirely right that the construction and development of the railway system should be left to private enterprise. Private enterprise is, he thinks, bolder; companies are more flexible, more ready to take risks, and to try experiments in new methods than any State organization could be. Moreover—and the importance of the point will not be lost on anyone who remembers that the bulk of the American railways have at one time or other passed through a receiver's hands, and that some 40 per cent of their share capital receives no dividend—if a company imprudently or unwisely invests its capital in a nonpaying proposition, while private individuals lose their money, the public is uninjured. Capital borrowed on credit of the State is a permanent bur-

den on the country as a whole, whether or no it earns any net revenue to pay the interest. On the other hand, once the system is created and substantially finished, Sir George Gibb, in the paper referred to, considered it an open question whether state or private ownership and management should be preferred.

#### COST OF RAISING CAPITAL.

It is this question, therefore, that we have now to consider. It is commonly claimed, as one of the advantages on the side of the State, that it can raise capital more cheaply than any private company. And the claim is not without substance. But the advantage is not great. The market value of United States bonds can not be compared with that of first-class railway mortgage bonds, because of the fictitious value attached to the former for bankers' purposes. But in England over a series of years—though here, too, consols have to some extent had an artificial value—the interest on first-class railway debentures has averaged, perhaps, half of 1 per cent above the interest obtainable on Government obligations. At the moment of writing, while the English Government is borrowing on short-term bonds at the rate of 6 per cent, first-class railway debentures are still selling on the basis of less than 5 per cent yield. And it is only the first-charge securities of railway companies which can fairly be compared with the Government stocks, for the income return on junior securities, more especially common stock, includes a more or less considerable allowance for insurance against risk. Averaging the return on all capital invested in a successful private company, it would undoubtedly be considerably higher than the return paid to the purchasers of an equal amount of Government railway stock. But the Government stock would unquestionably include a considerable amount of capital spent on railways not producing any, or only an inadequate, income, which capital, as has already been said, would have been in the case of a private company either written down in market valuation or, it may be, written off entirely.

#### ECONOMY IN USE OF CAPITAL.

Further, though a saving of perhaps half of 1 per cent in interest is not unimportant when the capital is reckoned in billions of dollars, it may be more than compensated for by a greater proportional increase in the capital itself. Is this likely to be the case? It is certainly the common belief of ninety-nine business men out of a hundred, both in America and in England, that the Government gets less value for its money than a private trader. So far as it is possible to compare one country as a whole with another, it certainly looks as if this belief were justified in railway experience. The railroads of the United States were capitalized in 1915 (deducting intercorporate ownership) at \$66,447 per mile. The State railroads of New South Wales and Victoria were capitalized at \$77,253 and \$65,774 per mile, respectively.<sup>1</sup> It must be admitted

<sup>1</sup> The cost per mile of the railways in the other Australasian colonies, and also in the Cape of Good Hope, is much lower than in New South Wales and Victoria. But they are all, with one partial exception, narrow-gauge lines, and can not be compared with the American railroads. The cost of the Canadian private roads is very much the same as the American average. The cost of the National Transcontinental railway recently constructed by the Canadian Government was estimated to be \$39,083. It has actually cost \$99,000.

that the Australian roads, whose construction engineers had been brought up to regard England standards as universally applicable, are more substantially and expensively built than many of the western roads of the United States. On the other hand, the American figure includes the trunk-line railroads of the East, with a standard of construction and a mass of equipment to which the Australian roads can offer no analogy. On the whole, it is safe to say two things. If an experienced railway man came to America for the first time and made an exhaustive examination of the United States railroads, he would marvel when told that so magnificent a machine had been built up at a capital cost of only \$66,447 per mile. If an English or an American business man, fortified by the expert's opinion, were asked whether he thought his own Government could have carried out the work as cheaply, it is equally certain what his answer would be.

Summing up, then, the subject of capital cost, it would appear that whereas on the one hand the State can obtain its capital somewhat cheaper, on the other hand private enterprise makes each dollar of capital go further. And the advantage and the disadvantage may fairly be set off, the one against the other.

#### QUALITY AND COST OF SERVICE.

The vital question, however, is not concerned with construction and capital cost, but with the day-to-day working of the actual existing system. Will the public on the whole get better services or lower rates, or possibly both these advantages? On this question there is a mass of accumulated information that may help to an answer. But the difficulty of making a fair comparison between one country and another is exceedingly great. National customs differ widely. To give one striking instance: The average American railway charges its passengers 2 cents a mile, and admittedly makes no profit. The East Indian Railway charges 4 mills and makes a handsome profit, because the Bengali ryot is content to travel under conditions of speed and accommodation and convenient frequency of service which imply reductions in operating costs more than counterbalancing the fivefold reduction of charge. And even the 4 mills rate is a much larger tax on the income of the ryot than the 2-cent rate is upon that of the American laborer, etc. What shall be said? Would it be reasonable to say that, all things considered, the passenger fares in America are really lower than those in Bengal, in spite of the fact that in Bengal a man can travel 5 miles at the price of 1 mile in the States? Must it not be acknowledged that, where conditions are so absolutely different, one can not really compare but can only contrast?

If comparisons are to be of value they must be made where conditions are, if not similar—that we shall never find—at least as similar as may be. This much seems clear. Given two countries in which the standard of living and the purchasing power of money are substantially the same, and where the quality of railway service is substantially the same also, the country in which the rates charged are the lower is the country best served by its railways. If a country, where the purchasing power of money is low, obtains the same quality of service at a substantially lower rate than is charged in countries where the purchasing power of money is high, where, in other words,

ordinary commodities are cheap, then surely that country has an exceptionally efficient railway service. Tried by this test, how does the United States stand?

It is a matter of common knowledge that the freight rates of the United States are out and away lower than those of any country with which comparison can reasonably be made. The figures of the average receipts per ton-mile for Germany and France are nearly double those for America, 1.37 and 1.30 per ton-mile, respectively, as against 0.738 cent.<sup>1</sup> And all the other countries of western Europe, except Belgium, are higher than France. The Belgian rate is 1.13 cents. As we get toward the east, rates fall. In Russia the average is 0.94, in Japan 0.87, and finally in India it gets down to 0.74 cent, which is practically the same as the American figure.

The reason why oriental rates are low is obvious. Roughly, half the cost of railway operation is direct labor cost. And in Japan a railway employee earns a dime, and in India a nickel, where in America he earns a dollar. Why, then, are not the rates still lower? Because it needs many orientals to do the work of one American, with his efficient methods and his labor-saving appliances. To give one instance, railway embankments in India were till quite recently, and probably are still, constructed by gangs of coolies running to and fro with small baskets of earth upon their heads.

But let us leave India aside. Once more it is a contrast and not a comparison. Confining ourselves to Europe, we may say broadly that it costs as much to move a ton 1 mile in Europe as to move it 2 miles in America. And when all allowances have been made for circumstances tending to make European business more expensive to handle—short hauls, more diversified loads, higher cost of coal, etc.—the 100 per cent difference in rate is so great that it seems impossible to doubt that a large part of it must be due to the greater efficiency of the American railway.

#### PRUSSIA COMPARED WITH UNITED STATES.

The European country where the traffic conditions most nearly approach those of America is undoubtedly Prussia. In the years since 1880, by which time the railways had mostly been taken over by the State, the Prussian population has increased some 60 per cent and the urban population in a still higher ratio. The output of German, mainly Prussian, coal has grown from under 60,000,000 to over 250,000,000 tons, and of steel from under 1,000,000 to over 17,000,000 tons. And Prussia is, by universal consent, the country where State management is at its best.

Let us take the claim of a panegyrist of the Prussian system and see how it compares with American achievement. In a paper read at the Royal Economic Society Congress in London, in 1911,<sup>2</sup> Prof. Schumacher, of Bonn, gave two instances of the accomplishments

<sup>1</sup> English figures are often given in international comparisons, but they are pure guesses. And how far the guesses are wide of the actual facts no man can say, for English railways, with one exception, do not publish, or even compile, ton-mile and passenger-mile statistics. One company, the North Eastern, does compile these figures, and used to publish them, but has ceased to do so in recent years. Even if the recent North Eastern figures were available, it would be quite impossible to say how far they are typical of the English railways as a whole. The present writer's guess is that they are not typical, because, for one reason, the preponderating traffic, which is in coal, is carried for unusually short distances and therefore at unusually high rates.

<sup>2</sup> The State in Relation to Railways, London, P. S. King, 1912.

of the Prussian railways: "In the case of goods sent in bulk, the freight for long distances is as low as 0.8 pfennig per ton-kilometer." This is, roughly, 0.35 cent per ton-mile, which is very far from being a startlingly low rate in America, seeing that the average rate for coal last year on the Chesapeake & Ohio Railroad was only 0.304 cent, while for all traffic—high class as well as bulk freight, short distance as well as long distance—it was only 0.38 cent per ton per mile.

Prof. Schumacher says, further, that "the receipts amounted in 1880 and 1909 to 4.14 and 3.54 pfennigs per ton-kilometer, respectively (1.65 and 1.41 cents per ton-mile). They have therefore been reduced by about 15 per cent." The corresponding receipts per ton-mile for the American railways were, in 1882—the first year for which adequate figures are available—1.236 cents; in 1909, 0.763 cent. In other words, the American ton-mile rate started at the beginning of the period 25 per cent below the Prussian rate, and it fell in the course of the 29 years not 15 per cent, but nearly 40 per cent. At the end of the period the American rate was not much more than half the Prussian rate—0.763 cent compared with 1.41. There are many elements, doubtless, responsible for so striking a difference. But, when all have been taken into account, a railway expert is bound to come to the conclusion that the main element is relative operating efficiency. To discuss this subject here at length is impossible. But one point may be taken—the incomparable cheapness of American carriage is primarily due to the employment of the largest possible units of carload and trainload. Less than 30 years ago 8-ton coal cars could still be seen in Jersey City. Since then the size of the car has been increased to 30 tons, 50 tons, and now 70 tons and 90 tons. Prussia, not being hampered like England with high platforms and innumerable tunnels limiting the loading gauge, might well have followed the American example. But she has clung to the old four-wheeled cars, with an average capacity of less than 15 tons, with the result that, while the average American freight train has reached 500 tons, the Prussian load is 246 tons, or less than half the American.<sup>1</sup> And, to redress the balance, the American freight rate per ton-mile is half the Prussian, spite of the fact that Prussian railways pay practically no taxes and that American wages are double those in Prussia.

It may be added that the progressive reduction of rates, of which Prof. Schumacher speaks, had in fact ceased long before 1909. M. Colson writes: "The Germans no longer make any serious freight-rate reductions. Within the last 10 years the average rate per ton-kilometer has oscillated between 4.41 centimes and 4.36 centimes per ton-kilometer (1.37 cents and 1.34 cents per ton-mile), according to the composition of the traffic. During the same period the average rate in France has fallen from 4.71 centimes in 1901–2 to 4.19 in 1911 (1.45 to 1.3 cents per ton-mile), a reduction of 11 per cent." On the other hand, he adds that "between 1905 and 1911 the average passenger fare fell in Germany from 3.22 to 2.94 centimes per kilometer (0.99 to 0.902 cent per mile, nearly 9 per cent), while in France it

<sup>1</sup> When the American rate was 1.236 cents per ton-mile the trainload was only 129 tons. It is mainly the increase of the trainload to 500 tons and the consequent increase of the train-mile revenue to \$3.74, spite of a 40 per cent drop in the average ton-mile rate, which has made the modern American rate of 0.738 cent possible.

only fell from 3.69 to 3.50 centimes" (1.13 to 1.08 cents per mile, just 5 per cent).<sup>1</sup> It may be added further that even the 15 per cent reduction, of which Prof. Schumacher speaks with pride, is largely due not to reduction in individual rates but to the increased proportion of the whole traffic, which consists of coal, iron ore, and other raw materials taking the lowest rates.

#### PRUSSIA COMPARED WITH FRANCE.

But it is perhaps scarcely fair to compare Prussian railways with those of America. After the battle of Salamis Themistocles received by the vote of the Greek generals the first prize for valor, for, though each general considered that he himself was entitled to the first place, they all agreed that Themistocles was entitled to the second. Similarly, though the railway men of other countries might each claim the first place in efficiency for themselves, there can be little doubt that they would all agree in giving their second vote to the United States. The railway service in America has attracted perhaps the best brains of the country. In Germany military, naval, and diplomatic careers, and even professorships in the universities, offer higher inducements to their brightest men.

German railways, however, may be fairly compared with those of France, where Government service has a similar prestige. M. Colson has on numerous occasions compared the efficiency of operation of the two countries. The comparison which he makes is in outline as follows:<sup>2</sup>

Prussia occupies a position naturally more advantageous than France from the point of view of economical operation. The country is almost wholly flat, while most of France is hilly and a considerable part mountainous. Coal is immensely cheaper, and also steel. The traffic density is much higher, the number of units of traffic (ton-kilometers and passenger-kilometers) carried being more than double in Prussia, though the length of line is only 29,000 as against 25,000 miles. On the other hand, it is to be admitted that the French length of haul is somewhat greater. The charges made for carriage are substantially identical in the two countries. There is a difference of about 3 per cent in the average ton-mile rate in favor of Prussia. But this difference is very much more than explained by the much larger proportion in Russia of coal, iron ore, and other bulk freight carried at the lowest rates. Taken separately, the average rate per kilometer for coal in 1905 was 3.10 centimes (0.96 cent per ton-mile) in France and 3.16 centimes (0.98 cent per ton-mile) in Prussia. For all other freight it was 5.07 (1.57 cents per ton-mile) in Prussia against 5 centimes (1.55 cents per ton-mile) in France. But when the two came to be added together, the total result was 4.30 centimes (1.34 cents per ton-mile) in Prussia and 4.52 (1.40 cents per ton-mile) in France. In the case of passenger traffic, M. Colson admits that the average rate is 12 per cent higher in France. But he points out that 30 per cent of the Prussian passengers are carried in fourth-class carriages, in which to a very large extent there are no seats, a class of accom-

<sup>1</sup> *Revue Politique et Parlementaire*, May, 1913.

<sup>2</sup> See Colson's articles in the "*Revue Politique et Parlementaire*" for May, 1902; May, 1904; May, 1906; May, 1907; November, 1910; December, 1911; May, 1913; and May, 1914. See also "*Cours d'Economie Politique*," Livre VI, 1907. The outline in the text is mainly taken from *Cours d'Economie Politique*."

modation to which France offers no parallel. Further, a much larger proportion of the freight traffic in Prussia is in straight carloads, loaded and unloaded by the shipper, services which are usually included in the French rate. Wages in France are at least as high, if not higher, than in Prussia; and, in addition to the wages, the French railways incur charges amounting to quite a high percentage of the total wage bill for pensions, superannuations, and other benevolent purposes. Again, the French railways are subject to serious responsibilities from which the Prussian State railways are free. In both countries there is a legal limit of time fixed within which traffic must be delivered at destination, and if this limit is exceeded the freighter is entitled to damages. But in France the period begins to run from the time the freight is brought to the railroad; in Prussia, only from the time when the railroad gives notice that a freight car is ready to receive it. The French railways are required to pay full compensation for loss, damage, or delay.

In Prussia liability is legally limited to a fixed and usually quite small sum, normally a certain proportion of the freight charge paid.<sup>1</sup>

Another fact which should tend to produce a lower operating ratio in Prussia than in France is that a larger proportion of the French traffic is passengers, and passenger traffic under French and German conditions is unquestionably less profitable than freight traffic. "From the combined effect of all these causes," writes M. Colson, "if the operating ratio in France were 10 or 15 per cent higher than in Germany, it would not imply inferior operating ability. But, in fact, the difference is in the opposite direction. If our companies worked as expensively as the German State railways, they would spend from twenty to forty million dollars more than they do per annum." The operating ratios, as given by M. Colson, for different dates are as follows:

	1900	1910	1911	1912	1913
	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>
France.....	54	60	62.5	63	63
Prussia.....	62	67	65	66	66

The difference has lessened in recent years. But the explanation is that since 1909 the Western Railway of France has been handed over to the State, and the operating ratio of this system has gone up to such an extent (it was 87 per cent in 1911, according to the official figures used by Mr. Colson—though M. Le Roy Beaulieu<sup>2</sup> makes it to have really been as high as 90 per cent—and 89 per cent in 1913, as compared with an average of 60 per cent for the five years before the purchase) as seriously to affect the French average. Thus, while the operating ratio for all the French railways in 1911 was 62.5 per cent as given above, for the private lines only it was 58.5 per cent. So it appears that the divergence of 7 or 8 per cent in the operating ratio between the French companies and the Prussian State railways

<sup>1</sup> A full account of the stern restrictions with which the liability of the German State Railways is fenced round will be found in "German v. British Railways," by Edwin A. Pratt (P. S. King & Co., London, 1907). Mr. Pratt quotes a statement made to him by a large German trader that, sooner than send in claims which they would have no chance of getting paid, "they had better save the postage stamp."

<sup>2</sup> The State in Relation to Railways, p. 55.

remains substantially the same over a series of years. And the fact that the expenditure on the Western of France has, since that system was taken over by the State, increased out of all proportion either to its own previous expenditure or to the expenditure still found sufficient on the remaining private railways clearly affords no argument for the economical management of the Prussian State.

#### NEW SOUTH WALES COMPARED WITH TEXAS.

Let us attempt another comparison. To compare Australia as a whole with the United States as a whole, though the two areas are very nearly the same, would be unreasonable. Australia, with only 5,000,000 inhabitants, has nothing comparable with the enormous traffic of the North Atlantic States. But a comparison between New South Wales, the oldest Australian Colony, and Texas seems to be fair and is not without interest.

New South Wales, with 310,000 square miles, is not dissimilar in area from Texas, with an area of 262,000 square miles. But Texas had a population at the census of 1910 of 3,900,000, while the population of New South Wales was only 1,650,000. The New South Wales population is not only smaller but is increasing less rapidly. In the 10 years 1901-1911 it only increased from 1,359,000 to 1,648,000, or 21 per cent. In the same period the population of Texas increased from 3,049,000 to 3,897,000, or nearly 28 per cent. But while Texas, with double the population, had at the census of 1910 no town of over 100,000 people, no less than 621,000 of the inhabitants of New South Wales lived in Sydney and its suburbs. It is safe to say that a chief cause—if not the chief cause—of the smaller population of New South Wales, and its concentration in and around the capital, as compared with the larger and better distributed population of Texas, is the difference in the railway development and service of the two countries.

Texas has over 15,000 miles of railway, against 4,000 in New South Wales, giving a mile of line for every 259 inhabitants of Texas, as against a mile of line for every 412 inhabitants in New South Wales. Certainly the New South Wales Government does not seem to show to great advantage as compared with private companies, so far as enterprise in opening up new country is concerned.

Now let us see whether the railways that have been constructed in New South Wales serve the public better than the railways of Texas. The average rate in Texas per ton-mile in 1915 was 0.995 cents, and the average rate in New South Wales for the same year, inclusive of terminals, which the official statistics leave out in their ton-mile calculations, was 2.20 cents, or more than double. It is true that the average fare per passenger mile in New South Wales, where it is pulled down by the enormous commuters' traffic of Sydney, was only 1.15 cents, as against 2.42 cents in Texas, or less than half. But no one will suppose that low rates for passengers are as important to the prosperity of a country as low rates for goods. And, besides, whereas the average passenger journey in Texas was 53 miles, and in New South Wales only 14 miles, the average distance a ton of freight was hauled was 135 miles in Texas, as against 79 in New South Wales.

Comparing the work done for the public in the two States, we find that in Texas 7,360,000,000 tons were hauled 1 mile; in New South Wales only 917,000,000. Passengers hauled 1 mile were, on the other hand, 1,231,000,000 in New South Wales, against 1,007,000,000 in Texas. Putting the two together we have 8,367,000,000 traffic units (1 ton or 1 passenger carried 1 mile) in the year in Texas, against 2,148,000,000 in New South Wales. In other words, the private railways of Texas performed for the Texan public nearly four times as much work as the New South Wales State railways performed for the public of that State.

The traffic density is very much alike in the two cases: Five hundred and fifteen thousand traffic units per mile of line per annum in Texas, 580,000 in New South Wales. The Texan railways have a considerable advantage in better gradients and longer hauls, and for both these reasons lower rates in Texas might naturally be expected. But the difference is far too great to be explained on these grounds. Per unit of traffic carried, the public were charged in Texas 1.17 cents, in New South Wales 1.60 cents—nearly half as much again.

As the result of their high rates the New South Wales railways earned \$9,140 per mile of road per annum. As the result of their low rates the Texan railways earned only \$6,592. But, thanks to superior efficiency of management, the Texan railways spent much less to carry each unit of traffic. Per unit the Texan railways spent 0.935 cents; the New South Wales railways spent 1.115 cents. In other words, had the Texan railways operated as expensively as the New South Wales railways they would have had practically no net revenue at all.

One point more. The Texan railways have had to raise their capital as best they could, and could do very well with more of it. Were they in a position to raise new capital on favorable terms, they could doubtless improve their operating efficiency still further. The New South Wales railways can raise, and always have been able to raise, on the government credit all the money they need at the lowest rate of interest. Will anyone deny that, even handicapped as they are, the private railways of Texas are giving to the people of Texas a more ample, a more efficient, and a cheaper service than the Government of New South Wales gives to its citizens?

#### PRIVATE RAILWAYS LEAD IN INVENTIONS AND IMPROVEMENTS.

To turn from specific comparison to more general considerations: The fact has already been mentioned that, while the American companies have boldly revolutionized their machinery and methods of carriage, the Prussian State has clung to old machinery and old methods. The huge engines and freight cars used in America to-day could never have run on the rails or crossed the bridges as they existed in 1880. So the American companies have laid ever heavier and heavier rails and have rebuilt their bridges, often more than once. The Prussian State is content to put forward as a sufficient reason for adhering to the old methods the fact that track and bridges are not strong enough to carry the heavier equipment.

This example is typical. In all the history of railway development it has been the private companies that have led the way: the State systems that have brought up the rear. It would be difficult

to point to a single important invention or improvement the introduction of which the world owes to a State railway.<sup>1</sup> England shares with America the credit of having invented the locomotive. England first rolled steel rails, but America was not long behind. England first introduced the block system of signaling, while to America is mainly due the later development of automatic appliances. There are two types of power brakes on the world's railways. The Westinghouse brake was invented in America, the vacuum brake in England. The automatic coupler is wholly American. So are the sleeping car and the dining car. Shunting by gravity, which accounts for a saving of millions of dollars a year, was invented in England, but has been mainly developed in America. Brunel, on the Great Western of England, first taught the world what express trains meant. And 40 years later the English companies in the historic "Race to Edinburgh" in 1888 gave a new interpretation of the term. America promptly replied with the "Empire State Express," and bettered the instruction with the "Atlantic City Flyers." The French companies, too, took up the challenge, and put on trains from Paris to Calais, and to the Belgian, German, and Spanish frontiers that could hold their own with anything that England and America had to show. And meanwhile the international expresses of Prussia and Belgium jogged contentedly behind. It is true that in these two countries the track was not fit for high speeds. Nor was it at the outset in France or America. But it was possible to make it so—at least where it was in the hands of a private company. Take the latest problem of all, the electrification of main lines with dense traffic. Electric working is constantly pushing out from New York and Philadelphia, from London and Liverpool and Manchester. And meanwhile the Prussian Government has carried out some interesting and exhaustive experiments on a special track at Zossen.

Railroading is a progressive science. New ideas lead to new inventions, imply new plant, new methods. And this means the spending of much new capital to be recouped by larger economies later on. The State official mistrusts ideas, pours cold water on new inventions, grudges new expenditure. No one questions the ability of the German people. German manufacturers, German merchants, German bankers have taught the business world a good deal in recent years. German railway men have written many books, some of them valuable; but in practical operation they have taught the railway world nothing. Why? Is it because they are State officials?

#### ENGLISH GOVERNMENT MANAGEMENT OF TELEGRAPHS AND TELEPHONES.

Certainly English experience of undertakings in the hands of public authorities would lead us to suppose so. English experience confirms the conclusion of the Italian commission of 1881 that "the State is more likely to tax industry than to foster it." Fifty years ago the English Government acquired the telegraphs. Three official estimates of the cost of acquisition were put forward. The first was for \$11,679,600; the second was for \$29,199,000; and the third was

<sup>1</sup> Possibly the Schmitt locomotive superheater might be claimed by the German railways as an important improvement of which the credit is theirs.

for \$32,848,875. According to the official figures the capital account was finally closed with a total expenditure of \$52,887,289. On the basis of the \$29,199,000 capital cost, the post office estimated to obtain an annual net revenue of \$987,900. The fact had been that, on the average of the last 10 years, there has been a loss of more than \$4,866,500 per annum.

The act authorizing the Government to acquire the undertakings of the telegraph companies was passed in 1868. In the following year a further act was passed giving the post office the monopoly of the business. When telephones were invented the post office did nothing to encourage their development. It merely looked on while private companies undertook the work. As soon as it became evident that the thing was serious, the post office took fright and started out to defend its monopoly. After long litigation the supreme court of appeal decided that a statute passed many years before telephones were born, giving the Government the monopoly of telegraphs, extended to all forms of electric communication. And thereupon the post office proceeded to handicap its rival by imposing a license fee of 10 per cent on all telephone gross receipts. Not content with this, it took all the trunk lines into its own hands, leaving the company only the local exchanges. It reserved certain areas for itself, characteristically giving in these areas, except in quite populous places, telephone service only from 8 a. m. to 8 p. m. on week days; whereas all the company's offices were open continuously. And last, not least, it only granted short-term licenses, so that the company had difficulty in raising necessary new capital. Spite of all these difficulties, the company managed to pay a fair dividend till finally in 1911 the licenses expired and the post office took over the whole business. It has already succeeded in converting a surplus into a substantial deficit. And one is keeping well within the facts to say that so far the service to the public has not improved.

The English post office has made yet another, though less important, effort in the direction of "taxing industry rather than fostering it." It had been urged for many years to establish a special delivery service for letters, and had steadily refused, alleging that there was no substantial public demand. Some 25 years ago, an enterprising company started in London a district messenger service. It was found to meet a real need, and seemed to be likely to establish itself successfully. Thereupon the post office, which has a statutory monopoly of the carriage of letters, promptly took action. It began by hampering its more nimble rival with a heavy license duty, and it went on to establish a service of its own, which, though less convenient and flexible, was considerably cheaper. Naturally the company was hard hit, and it has only maintained its existence by undertaking other work, such as that of a theatrical ticket agency. The net result is that London has two inferior services instead of one good one. Whether the post office makes a profit or a loss the published accounts do not show.

#### MUNICIPAL ELECTRICITY IN ENGLAND.

England is admittedly behind her two great commercial rivals, the United States and Germany, in the application of electricity to commercial purposes. And this we owe to the fact that the muni-

cipal authorities have faithfully followed the lead of the post office. Gas lighting was introduced all over the country by private companies; but the gas undertakings in most of the important cities have long ago passed into the hands of the municipalities. And as a rule, as private enterprise had piloted them safely through their early stages of development, they have been the source of considerable profits to the city exchequer. About 30 years ago, when electric lighting first became commercially possible, Parliament, by an act passed in 1882, and an amending act passed in 1888, laid down a general code regulating the subject. Broadly to this effect: Either a company or a local authority may apply to the competent department of the government, the board of trade, for an order—or, in American phrase, charter. If both a company and a local authority apply for an order relating to the same area, it is the application of the local authority only that is granted, unless under exceptional circumstances. If an order is granted to a company, it expires after 42 years. The original period was only 21 years; but it was found that on this condition no company could raise capital.

If an order is granted to a local authority, it is in perpetuity. The order gives to the grantees, unless and until a new order admits a competitor, which in practice never now happens, a monopoly of supply within the scheduled area. The board of trade has wide discretion to revoke the order where the grantees have not substantially carried out the works projected or where they fail to furnish a satisfactory supply. The upshot of these conditions has been this. At the outset a large number of local authorities applied for orders, apparently merely with the object of keeping out private enterprise, for they took no steps whatever after they had obtained their orders to put them into effect. After considerable delay the bulk of these blocking orders were revoked, but private enterprise had meanwhile been effectively warned off. When at length it became evident that public electric supplies must come, in some areas companies were grudgingly admitted; in other areas the local authority undertook the work itself; whichever happened it was a very frequent complaint that the local authority was more concerned for the protection of the existing revenue from its gas undertaking than for the development of the new force, which science was ready to put at the disposal of the public.

A later phase of the situation came into view when the suitability of electricity, not merely for lighting, but for power purposes, became manifest. A municipality could not legally supply beyond its own restricted area. And industrial districts in their development pay no attention to city boundaries. Numerous companies, influentially supported, brought forward schemes of wholesale generation with modern plants for large districts. A good many orders were granted. Only one of the schemes has been even a moderate success. And a chief reason has undoubtedly been that the municipal authorities of the important cities geographically included in the various districts fought successfully to deprive the power companies of the right to supply within their cities, alleging that it was not in the public interest that private companies should, for selfish ends, compete with undertakings carried on at the public expense and for the public benefit. And so England is still mainly given over to small separate undertakings, which can not in the

nature of things give a cheap supply, and which in many cases are unable to give a supply on such a scale as would be necessary if a large manufacturer desired to substitute electricity for steam as the motive power in his factory.

#### PUBLIC OFFICIALS AND COMMERCIAL MANAGERS.

Other instances might be cited from English experience. But the above are sufficient to show that in England at least the official is not eager to foster industry; that he will fight to maintain the acquired situation of his public undertaking, however much it may be in the interest of the public itself that the situation should be modified. It might have been expected, *a priori*, that public officials, having only the public interest to serve, and having no shareholders to whom increase or decrease of profits means increase or decrease of dividends, would be more ready to take reasonable risks, more complaisant, less meticulous to protect their undertakings to the utmost, than the managers of commercial companies. But experience shows that the reverse is the case. The careful Prussian regulations limiting, and in practice usually excluding altogether, the liability of the railway administration for delay, loss or damage of freight, have already been mentioned. It may be added that the Prussian railways have an elaborate system of "delivery insurance" under which, by making an extra payment, the shipper, if the ample legal limit of time for transportation is exceeded, can recover some extra compensation from the railway. It is difficult to imagine what would be the attitude of a shipper in England or the United States, if he was asked to insure at his own expense the fulfillment by the railway company of its common law duty to him to deliver his freight within a reasonable time.

In every country where railways are highly developed, rates for freight consigned in full carloads are lower than for freight consigned in retail quantities. And the practice is abundantly justified, commercially on the ground that the wholesale price is always less than the retail, and technically on the ground of the saving of operating cost to the railroad. England, where the public still persists in regarding to railway truck as only a slightly modified carrier's cart, makes the least reduction, averaging perhaps 15 to 20 per cent. France makes more. America, which usually concedes the reduction of two classes in the classification, makes still more. But Prussia goes much further than any other country. Freight, not classified as entitled to exceptional rates, and therefore carried at the rates of the normal tariff, is charged in the ratio of 9 to 4, according to whether it takes the 10-ton or the package-freight rate. And, as a result of this method of charging, 95 per cent of the Prussian traffic is in carload lots. The system is highly convenient and profitable to the railroad, for it evidently leads to the more economical occupation both of the road and the freight cars. Whether it is equally in the public interest is more than questionable.

Assume that a freighter at a way station 20 miles west of Berlin wishes to send 2 tons of merchandise to a similar station 10 miles short of Frankfort. He has two courses open to him. Either he can send it direct—if he does, he will be charged 4.5 cents per ton per mile—or he can hand it over to a "spediteur" or forwarding agent.

In that case the "spediteur" will take it back to Berlin at the less-than-carload rate, send it thence to Frankfort as part of a 10-ton consignment, and thence reconsign it back to its destination as package freight. The consignor will gain something in money—the smallest proportion, namely, of the difference between the package freight rate and the sum of the three rates paid by the "spediteur" which the "spediteur" thinks will induce the consignor to continue to deal with him in future. But he will hardly gain in promptitude of delivery. Can it be doubted that in this instance it is railroad interest rather than public convenience which is primarily regarded?<sup>1</sup>

Here is a comparison on all fours of English and Prussian methods: In England any respectable shipper—and, indeed, any private individual—can open what is known as a "ledger account" with the railway company. He then obtains practically two months' credit for the carriage of his shipments. The account for each month is rendered by the company to the shipper at the end of the month, and then the shipper has another month in which to pay. Oftentimes the month is exceeded. If the shipper disputes any item, on whatever ground seems to him sufficient, he strikes it out and only pays the balance. And the railway submits as of course to the charge remaining in suspense till the matter is settled. In Prussia a shipper can open a monthly account, provided his average freight payments amount to not less than \$75 a month, and provided he deposits with the railway administration cash or securities equal in value to one and one-half times his average monthly account. If in the course of the month his shipments reach the value of the securities deposited, he must either increase his deposit or pay prompt cash for the rest of the month. That this difference of method is not due to the fact that the railways are in the one case in England and in the other Prussia, but rather to the fact that in the one case they are in the hands of private companies and in the other in those of State officials may be concluded from the attitude of the State in England in the case of those commercial undertakings which it does manage. In England the maintenance of a deposit covering prospective telephone calls—or, rather, two deposits, one for local and one for long-distance calls—is as rigidly insisted on as is the corresponding deposit by the Prussian State railways; and a householder who neglects to replenish his deposit when exhausted, even though it may be only a few shillings overdrawn, finds his telephone service cut off without more ado.

As for liability for loss and damage, the regulations are sufficiently frank and drastic. "The postmaster general is not liable for any loss or damage which may be caused by the failure of any telephonic communication, whether such failure is or is not due to the act or default of any officer of the post office." And the regulations in respect of the telegraph service are to the same effect. Can such regulations be justified in the public interest? Can it be right that the public in its corporate capacity should refuse justice to its own individual members? Can these regulations be explained, except on the theory that they are imposed by the State official for his own convenience, and submitted to by the public, because, while individuals

<sup>1</sup> It should be further noted that these "spediteur" charges, which are not inconsiderable in the aggregate, should be added to the railway freight rates if we wish to estimate the total rates paid by the Prussian shipper as compared with his competitors in other countries.

can invoke the aid of the State against a powerful private corporation, they have no means—unless in the last resort and in cases of supreme importance—of redress against the action of the State itself!

#### CIVIL-SERVICE RULES AND PROMOTION BY MERIT.

To turn to a different point. Railway management, on its main sides of policy, operation and traffic, is essentially a commercial business, requiring commercial training and commercial aptitude. The railway man, if he is to serve his customers and his shareholders properly, must look ahead, plan boldly for the future, and not fear to take risks. His mind must be alert to recognize and use every new technical improvement, that so he may give the best possible service at the minimum possible expense. He must be quick to observe the course of trade, the changes of demand, the potentialities of new markets and new sources of supply, and to adjust his tariffs accordingly. Above all, he must keep abreast of his work, however arduous, even though it means working all day and half the night, and double tides on Sunday. If he fails—at least in the employ of a private company—he goes; and a better man takes his place.

Can we expect these qualities from a State official? Let the Italian commission answer. It is true they wrote 35 years ago, but human nature has not greatly altered in the interval. "On a State railway system the personnel would be chosen according to civil-service rules. Seniority would count more than merit or special qualifications. \* \* \* There would be bureaucratic dilatoriness, incompatible with railway service. This applies specially to the executive officers, who need to have, in the highest degree, industrial energy, initiative in planning improvements, commercial intelligence essential in controlling the various classes of expenditure; who have to encourage traffic, improve service, maintain discipline, and so forth. The chief officers and their staff must have a personal interest to stimulate them, and a high sense of responsibility to encourage them to perform their duty. And for men like these, the State would substitute officials with no personal interest in the operating results. Further, the Government employee is, as a rule, worse paid and subject to less severe discipline than men in private employment, and, consequently, he does less work.

When the operation of the Upper Italian Railways was temporarily taken over by the State only a short time elapsed before the discipline, energy, and promptitude of the staff, which had been excellent, broke down and the service became abominably bad. The general rule is that Government employees do less work, consequently more men have to be employed, and the wages bill accordingly goes up.

That on this last point the commissioners were true prophets the Italian experience since 1909, which has been recorded already, sufficiently shows. As for "industrial energy," "initiative in improvements," and "commercial intelligence" let the Prussian history of unchanged methods and cast-iron tariffs testify. But there is a more important point than these. There is general agreement, both in America and England, that to avoid the worse evil of political patronage appointments in the public service must be made by civil-service methods. This means appointment by an examination,

mainly literary, at an early age, a life tenure except in cases of gross incompetence, and promotion mainly by seniority. Will any human being claim that American railroads would have achieved their magnificent record of technical progress, of rate steadily reduced in face of a steady rise not only of railroad wages, but of prices of almost all other necessities of life, if the management of the railroads had been in the hands of men originally selected by an examination 40 years before who had since risen to the top not as the result of conspicuous competence, but by sheer seniority? And would the men who are now at the head of the railways have stopped in the Government service had they entered it as young men if they had only had the prospects of promotion and compensation which Government service affords?

#### POSSIBLE ABUSES OF PRIVATE OWNERSHIP.

At this stage it may be fairly said "Granted that State railway systems, like all other human institutions, are far from perfect, what about the abuse of private ownership?" And the point is a fair one. It might well be that the abuses of private ownership are so great that State ownership implies at least the lesser of two evils. How do the facts stand?

In the old days in England there was a saying of an official of the board of trade—afterwards well known as a director of one of the great English railways and president of the Grand Trunk Railroad of Canada, Sir Henry Tyler—which became famous: "If the State does not control the railways, the railways will control the State."

And thirty or forty years ago, when the railway directors were strongly entrenched in a House of Commons elected on a very restricted suffrage, the phase perhaps represented something more than a mere rhetorical exaggeration. In reference to England, as it is to-day, the idea is only laughable. The railways are absolutely powerless to resist public opinion. Five and twenty years ago the House of Commons threw into the waste-paper basket the original schedules of maximum rates—on the faith of which private capitalists had embarked \$5,000,000,000 in constructing railways. After an inquiry lasting over 10 years, they formally enacted new schedules of maximum rates which the companies "might lawfully charge and make." The companies were so ill-advised as to take Parliament at its word. And they proceeded in many instances to "charge and make" accordingly new rates which implied considerable advances on the scale then in force. Shippers rose in revolt and refused to pay. In the very next session Parliament deprived the companies of the power which it had given, and enacted that thenceforward no railway company should increase any rate to which one single shipper objected, unless the company could prove affirmatively in a court of justice that the increase of rate was justified by increased cost of doing the business. Similarly in America. There was a time—it will hardly be denied by anyone to-day—when the great railroads had inordinate powers, and those powers were concentrated in the hands of a single man. Not only might he abuse them for private interest, but in any case the powers were despotic. And democracies will not tolerate despotisms, even if benevolent. But the president-despot—benevolent or otherwise—has long been dead. And his day returns

not. Serious critics, both in England and America, have questioned whether private capital will continue to invest in railways, if the State continues to interfere so drastically both with operation and with rates. But no one is heard seriously to assert that Parliament and Congress lack the power to make their will effective, whatever the railroads may say or do.

A main argument put forward in favor of the nationalization of railways in Prussia was that the tariff system of the private companies was honeycombed with rebates, and that rebates were inevitable under private ownership. If this latter statement were true, it would be sufficient justification for sweeping away private ownership, without more. But it is not true. If after 70 years of private ownership in France no suggestion has ever been heard that rebates are there given, it is fairly safe to say that they have not been given. In England there were undoubtedly special favors given to certain freighters in the very early days, not probably from corrupt motives but merely as a matter of commercial custom. To big customers and keen bargainers rate concessions always had been given by the carriers, whether by road or by canal, and at the outset there seemed no reason why railroads should not follow the example. But as long ago as 1854, in words that were practically copied in the original United States act to regulate commerce 33 years later, the English Parliament enacted that rates should under the same circumstances be the same to all, and that if circumstances were different the difference in rate should be proportionate to the difference in circumstances. And thereupon rebates disappeared from English railway history. "It is remarkable"—the words are those of a House of Commons committee reporting in 1882 after an exhaustive investigation—"that no witnesses have appeared to complain of preferences given to individuals by railway companies as acts of private favor or partiality such as were more or less frequent in the years before the act of 1854." One still sees from time to time fines inflicted upon American railroad companies for offenses of this nature. But in almost every case the transgression had occurred some years before the infliction of the fine. It is safe to say that nobody in America to-day believes either that secret rebates exist to an appreciable extent or that the railroad officials desire to revive the practice of giving them.

Somewhat analogous to direct rebates are concessions given to traders and other persons whom it is desired to influence by liberal payment of claims for loss and damage of freight, by underclassification, free transportation, etc. In France, with a noncompetitive system, such practices have apparently never existed. In England they have never cut much figure, and as long ago as 1902 the establishment of a joint claims committee by the companies themselves put an end to such abuses in this respect as did exist. Free passes in England have never been an abuse, of which the best proof is that they still remain unregulated by law, and a manager can any day privately give a free pass to whom he pleases. That free transportation and the payment of bogus claims were serious abuses on the American railroads not so many years ago is undeniable. No one doubts that they are practically eradicated to-day. And, after all, the abuse of free transportation is not confined to private railroads.

Not very many years ago the *Melbourne Age*, the leading paper in the Australian State of Victoria; published a list, occupying 11½ closely printed columns, of free passes granted by the State railways to the relations and friends and dependents of members of Parliament.

#### STATE RAILWAYS NOT USUALLY PROFITABLE.

Our history has then reached this stage. In the two countries where the railways are still wholly in private ownership, the United States and the United Kingdom, nationalization can not be justified on the ground of lack of private enterprise. Nor is it necessary to avoid abuses, for those abuses can be either prevented or cured by adequate State regulation and supervision. Further, it does not appear that the State is likely to build railways cheaper. Still less, that it will surpass private companies in efficiency of management and will therefore have available more net revenue to be applied either to improvement of service or reduction of rates in the country as a whole.

With the exception of the South African Dominion—whose railways are not, however, important, and which owe their moderate success to the fact that the great mining community of Johannesburg, importing almost everything it consumes and accustomed to pay gold miners' prices, is many hundreds of miles from the sea—Prussia is the only country where the State system shows a substantial profit after payment of operating expenses and interest on capital. And this fortunate position Prussia owes to two things—it bought the railways at a most opportune moment, just before the great industrial and commercial development that has made modern Germany, and the Government has been powerful enough to maintain the scale of rates, as we have seen, practically unaltered over a long series of years. Belgium roughly makes both ends meet. Switzerland the same. The smaller German States and the Australasian Colonies, speaking broadly, over a series of years, have to make up some part of their interest charges out of general taxation. Austria, Italy, and France, on its State railways, as we have seen, produce deplorable financial results.

#### IS STATE MANAGEMENT MORE EQUITABLE?

It is, however, claimed that the State would apportion its favor with a more equal hand; would level the backward parts of the country up to the standard of the better developed; and adjust rates and fares more equitably. These were promises made by the Prussian Government when they took over the railways. And so far as the first half of the promise, the extension of the railroads into poor districts, is concerned, unquestionably it has been fulfilled. But the reason is to be found not in the beneficence of the State so much as in the fact that the only power in Prussia that counts, beside the throne, is that of the agrarian party, the junkers. Partly owing to their hereditary influence over the executive Government, and partly to the fact that the agricultural districts are enormously overrepresented in the Prussian parliament, they have succeeded in getting a good share of the surplus revenues from the manufacturing districts devoted to developing their own estates. On the other hand, as has

already been mentioned, when it comes to tariffs, no country has gone as far as Prussia in giving advantage to the big shipper over the small man.

In Australia, undoubtedly, railroads have been built in backward districts which private enterprise would never have touched. But if a railroad, after being open for traffic for ten or a dozen years, still hardly does more than pay its operating expenses, it is safe to say that it is not an undertaking which would have been entered upon at all by a prudent management had it been free to spend its capital where it would do most good to the public as a whole. In other words, the reason why such a line was built was political pressure. And that such lines are common enough all over Australia is sufficiently well known. Indeed, the report of the Victorian State railways for 1907 gives a list of seven branches, with an aggregate length of 46 miles, constructed at a cost of \$1,883,336, which were closed for traffic at various dates between 1898 and 1904 and abandoned altogether because gross receipts failed even to cover operating expenses.

The claim that the State will adjust rates and fares more equitably is more difficult to deal with. The famous Prussian finance minister, Von Miquel, asserted categorically that the only possible policy for a State system was to adopt a rigid tariff uniform over the whole country. And that is, in fact, the Prussian system of to-day. For 500 miles the rate is 10 times that for 50 miles. Whether this is equitable is another question. It certainly does not cost the railway 10 times as much to do the business. Nor does it seem to be treating the shipper in accordance with the canon of taxation which says that the end to be aimed at is equality of sacrifice by the taxpayer. But, be that as it may, while such a policy is possible for Prussia, with only a small seaboard, and where the Government owns not only the railways but the canals, it is unthinkable in England or in America. Imagine an English Government charging from London to Edinburgh 10 times as much as for the first 40 miles out of London. The only result would be to drive the whole of the traffic to the coasting steamers. As for America, the thing is still more possible. To quote an extreme case: The fact that after years of deliberation the Interstate Commerce Commission has finally decided that it is reasonable to charge more for a carload of freight from Chicago to Denver than from New York to San Francisco is sufficient, without more, to show that American railways, even under public ownership, would need to maintain tariffs in broad outline such as those existing to-day. Certain modifications might, and no doubt would, take place gradually, but the essence of the thing would needs remain unchanged. Tariffs, that is, would continue to be dictated not by a priori theories but by economic necessities. And such tariffs, one might say further, would continue to be denounced as unjust and unreasonable—as the intermountain rates have been for a generation by the citizens of Colorado—by those whom they appeared to prejudice, and who would naturally lay the blame on the railroad managers, whom they see, and not on nature and geography, which keep in the background.

#### NATIONAL RAILWAYS IN A DEMOCRATIC STATE.

We come now to a more important point, a point which may probably be said to be of more importance than all the others put together.

Prussia is undoubtedly the most successful instance of State railway management. Reasons have been given already for thinking that the Prussian success, achieved under uniquely favorable circumstances, is not so much to boast of after all. But let it be admitted for the sake of argument that the success is as brilliant as it appears to the imagination of the most enthusiastic German professor. The point can not be too much insisted on that the success of the Prussian autocracy is no argument for similar success in the hands of English or American democracies.

A great American, who has passed over the majority within the last 12 months, Mr. Charles Francis Adams, put the matter nearly 40 years ago in words that have so often been quoted that they have become classic:

In applying results drawn from the experience of one country to problems which present themselves in another, the difference of social and political habit and education should ever be borne in mind. Because in the countries of continental Europe the State can and does hold close relations, amounting even to ownership, with the railroads, it does not follow that the same course could be successfully pursued in England or in America. The former nations are by political habit administrative, the latter are parliamentary; in other words, France and Germany are essentially executive in their governmental systems, while England and America are legislative. Now, the executive may design, construct, or operate a railroad; the legislative never can. A country, therefore, with a weak or unstable executive, or a crude and imperfect civil service, should accept with caution results achieved under a government of bureaus.<sup>1</sup>

A railroad is a great business concern. And as every business man knows, a business concern, if it is to prosper, must have a single directing mind at the head. Under an autocratic system the head is the minister of railways, ultimately responsible to the monarch, and to him alone. He may consult his customers, passengers, and shippers, listen to their grievances, and welcome their suggestions—the Prussian Government has an admirably organized system of district and national councils for this very object. But he alone decides. The King of Prussia is as really the head of the railroads as he is the head of the army. Between a railway chief in this position and a minister in a democratic country, changing every few years as his party goes in or out of power, liable at any moment to be outvoted if he refuses a concession that a substantial section of members of the legislature combine to demand, no comparison is possible. “The executive may design, construct, or operate a railroad.” And this is what happens in Prussia. “The legislative never can,” and in democratic countries it is the legislative branch of the government which not only decides policy but dictates always in main outline, often down to the detail of a particular appointment or a special rate, how the policy shall be carried out.

It may be objected that in every country, whatever be the form of government, the State runs the post office; and in almost every country the telegraphs, if not the telephones also. If it can manage these, why not also railroads? The answer is that between these two classes of business there is no analogy. The post office is a purely executive business, with no commercial side to it. Uniform rates, 2 cents or a penny, or whatever the figure may be, equal for all

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<sup>1</sup> “Railroads: Their Origin and Problems.” Edition of 1888, p. 115.

distances, are accepted as a matter of course. The amount is so small that nobody objects. If the charge for a letter were not 2 cents but a dollar, people would fast enough be found to protest that it was unreasonable to charge the same from Wall Street to Central Park as from Boston to San Francisco. A business such as this can be managed well enough by a civil-service organization. It is essentially a matter of routine and operating efficiency. There may be—in fact, there usually is—political interference in reference to appointments and promotions. And the staff, no doubt, avail themselves of their votes to improve their wages and working conditions. But this, though a pretty serious matter, is not so vitally important as the difficulties on the side of commercial management.

Whether a new railroad shall be built is not a matter where precedents and fixed rules can decide. It can only be decided by a man able to bring to bear on the question a trained mind and ripe judgment, after taking into account all the factors of probable traffic, probable cost, and whether the limited amount of capital available would not be better employed elsewhere, perhaps in something like double tracking or the construction of a new classification yard, which does not appear directly to benefit any single member of the public. It is hard enough for the best man, left free to exercise his unbiased judgment, to decide such questions rightly. Can it be expected that they will be decided rightly by a minister responsible to a democratic legislature, each member of which, naturally and rightly, makes the best case he can for his own constituents, while he is quite ignorant, even if not careless, of the interests, not only of his neighbor's constituency, but of the public at large? The answer is written large in railway history.

#### POLITICS IN SOUTH AFRICAN RAILWAYS.

It may be said without fear of contradiction that in no democratic community, where the railways are run by the public authorities, is railway capital spent on construction, developments, and improvements, or railway operation conducted, with a single eye to the best interests of the whole community. To produce public evidence of this statement is not easy. It is not fair to quote unsupported assertions in newspapers or elsewhere, as though they were proof. The men who know the facts from the inside are not in a position to publish them. But of recent years, South Africa has spoken out with considerable freedom on the subject in official documents. And South Africa may well serve as a sample. In March, 1907, a commission on the cape railways reported unanimously that it "was impressed with the necessity of removing as far as possible the management of the railways from the influence of party politics." Here is in more detail an account of the reasons which led them to that conclusion. The quotation is from "A Memorandum Relative to Railway Organization, Prepared at the Request of the Railway Commissioners of the Cape Government Railways," by Sir Thomas R. Price, formerly general manager of those railways, and now general manager of the Central South

**African (i. e., Transvaal & Orange River) Railways, dated Johannesburg, February 22, 1907:**

**POLITICAL INFLUENCES—DISTURBING EFFECT OF.**

The drawbacks in the management of the railways in the cape that call for removal arise from the extent to which and the manner in which the authority of Parliament is exercised. They are twofold in their character, viz:

(1) The practice of public authorities, influential persons, and others bent on securing concessions or other advantages which the general manager has either refused in the conscientious exercise of his functions or is not likely to grant, making representation to the commissioner (as the ministerial head of the Government), supplemented by such pressure, political influence, or other means as are considered perfectly legitimate in their way and are best calculated to attain the end applicants have in view.

(Many members of Parliament act similarly in the interests of the districts, constituents, or railway employees in whom they happen to be interested. It is by no means unknown for the requests in both classes of cases to coincide somewhat with a critical division in Parliament—present or in prospect—or otherwise something has occurred which is regarded as irritating to the public or embarrassing to the Government, and the desire to minimize the effect by some conciliatory act is not unnatural.)

(2) The extent to which the fictitious and often transitory importance which a community or district manages to acquire obscures (under the guise of the colony's welfare) the consideration of the railway and general interests of the colony as a whole.

(During the earlier period of my railway service in the Cape Colony few things impressed me more, coming as I did from a railway conducted on strictly business lines, than the extent to which the conduct of railway affairs was influenced by certain conditions. Nor was this impression lessened afterwards, when, in the course of a conversation on the matter, Sir Charles Elliott mentioned to me that he had more than once told a late railway commissioner, "The Government is powerful, but [mentioning the town and authority] is more powerful still.")

I do not regard it as open to doubt that the colony as a whole has suffered severely in consequence, the inland portions of the colony particularly so; and that the need for a remedy is pressing if the railroads are to be conducted as a business concern for the benefit of the colony.

**MEANS OF SECURING FREEDOM FROM POLITICAL INFLUENCES.**

The necessity for the railways and their administration being removed from such an atmosphere and treated as a most valuable means of benefiting the colony as a whole, whilst not neglecting the interests of a district (but not subordinating the welfare of the whole colony thereto), is pressing. That there should be an authority to refer to in case of real necessity, where the decision or action of the general manager is not regarded as being in the public interest, is also clear. But it is equally manifest that the commissioner or the government of the day, with political or party consideration always in view, is not the proper court of reference.

**POLITICAL INFLUENCES AS AFFECTING CONSTRUCTION OF NEW LINES.**

There can be little doubt that in the Cape Colony political considerations have influenced the adoption of new lines and their construction—many, if not most of them, of an unprofitable character—without sufficient inquiry or information, often with scanty particulars and possibly contrary to the advice of the officer afterwards intrusted with the construction and working of the line.

**PROPOSALS FOR NEW LINES—PROCEDURE RECOMMENDED.**

A material change is imperatively necessary in this respect, if only to insure solvency of the colony.

Neither the commission's report nor Sir Thomas Price's memorandum can have sufficed to change matters, for in May, 1915, there was

a further "Memorandum on the control and management of railways and harbors" presented to the South African Parliament by the board of railway commissioners. Here are some extracts from it:

Any minister, however able and strong his character may be, is under the system of party government, insensibly susceptible to party considerations, and is in constant difficulties in giving impartial decisions. \* \* \* It is perhaps natural that men who have been accustomed to the methods in vogue when the railways were of limited extent should still desire to cling to the old system of control, but the consequences of doing so can not but be unsatisfactory. \* \* \* As the railways and their working were regarded as part and parcel of the system of party government, with the obvious advantage to the party in power, the reluctance of any government to make a change is what might naturally be expected. Apart from the magnitude of the railways and the number of the railway servants employed, forces have of late years come into prominence that make it increasingly urgent that the railways and harbors should be regarded and administered in the interests of the whole Union and not as an adjunct of the party that is in power.

#### POLITICS IN AUSTRALIA.

Official documents have not let us behind the scenes in Australasia in the same way as has been the case in South Africa. But the public history is sufficiently striking. Down to the year 1884 the railways in all the different colonies were managed, like any other department of the Government, by a minister directly responsible to Parliament. This system was not a success, either from the financial or any other point of view. In 1884 Victoria led the way to the adoption of a new system. A buffer was inserted between the politicians and the railways in the shape of a nonpolitical commission. The commission was composed of three men holding office for a fixed term of five years, and, like judges, irremovable, except on a vote of both houses of Parliament. The members were all professional railway men, and the chief commissioner had the right, in case of disagreement, to overrule his colleagues. A well-known English railway man was appointed to fill the post of chief commissioner. The commission had not power to undertake the construction of new lines without the consent of the ministry, but the entire responsibility for the maintenance and working of the existing lines was handed over to them.

The example of Victoria was followed by South Australia in 1887, by New South Wales in 1888, and by Queensland and New Zealand shortly after. In each case the first chief commissioner was an English railway man. In Victoria the new system was not over-successful. Political pressure still continued. The financial position got worse. Budget estimates of expenditure were largely exceeded. And, as has already been mentioned, free transportation was given on a wholesale scale to the dependents of members of Parliament. After much mutual recrimination the commission was abolished and the railways handed back to direct political control. Evidently a commission which, though composed of individuals personally clean-handed, is not strong enough to crush attempts at jobbery in its neighborhood may be even worse for the public interest than a minister who uses his patronage for political ends, for the minister can at least be watched and exposed in Parliament by political opponents, while a commission can take shelter under the cloak of its statutory irresponsibility.

The experience of New South Wales was different. The chief commissioner appointed in 1888 was not merely a brilliantly able administrator, but a man of iron will. He insisted on managing the railroads committed to his care solely in the public interest. And within four years he had succeeded in simultaneously advancing wages, reducing rates, and increasing net earnings by 56 per cent, thus restoring the finances to a satisfactory position. The result was curious. The commission was persecuted by a "large number of people whose influence was at an end under a changed state of affairs." Two commissions of inquiry were appointed to investigate the alleged misdeeds of the commissioners. They found an unhesitating verdict for the defendants on every count of the long indictment. An address of confidence was signed by thousands of electors all over the colony and presented to the commissioners at an enthusiastic meeting of 5,000 citizens of Sydney. The commissioners were reappointed for a second term of five years, but early in his second term the chief commissioner died suddenly. Within a few years things had gone so far wrong that a royal commission was appointed to investigate. As a result of their report two out of the three commissioners were called upon to retire.

It is not possible here to go through the varying histories of all the colonies. One important phase of the history must not, however, be passed over. In Victoria in 1903 there was a fierce railway strike, which by the threat of a drastic bill introduced in Parliament, with the support of an almost unanimous public opinion, was promptly put down. Thereupon an act was passed depriving all railway servants of their local vote, placing them on a separate and distinct register, and giving them power to elect as their special representatives one member to the council and two to the assembly. In 1906 this act was repealed and superseded by "An act to abolish separate representation in Parliament of public officers and railway officers." Section 4 (1) and (2) of this act, which is still in force, is as follows:

(1) In order that all officers may be enabled to render loyal and efficient service to the State, it is hereby enacted that no person or class of persons employed in any capacity, whether permanently or temporarily, in the public service, including the railway service, the police force, the State rivers and water-supply department, and the lunacy department, shall either directly or indirectly take any part whatsoever in or in relation to election of members to the legislative council or the legislative assembly, or directly or indirectly in any way take part in the political affairs of the State of Victoria, otherwise than by recording a vote at a parliamentary election; and no person or class of persons so employed shall directly or indirectly use or attempt to use any influence in respect to any matter affecting the remuneration or position in the public service of either himself or any other person.

(2) If any person so employed is guilty of any contravention of this section, then on proof thereof to the satisfaction of the public service commissioner, the commissioners of railways, the chief commissioner of police, or the State commissioners and water-supply commissioners, or the inspector general of the insane (as the case may be) such person may by the said authority be fined any sum not exceeding £10 and may be reduced in class, subdivision, grade or status, and salary, or he may be dismissed or his services may be dispensed with, provided that such person shall not be dismissed or have his services dispensed with for any contravention of this section without the consent of the governor in council.

Victoria had in 1903 again reverted to the commissioner system. It imported an expert—this time from America—and a striking improvement, both in operating and financial results, at once became

evident. Since then there has been a relapse, and it is understood that at present Victoria is once more considering the importation of a new expert. In fact, in almost every colony, the management has gone through various phases. Sometimes there have been commissions of three, at other times single commissioners. At one time a commission has had full power; at another time it has been more or less subordinated to a minister. Or, again, the commission has been abolished altogether, and the railways have been worked by a general manager whose position is definitely that of a ministerial subordinate.

Another point may be noted. For 30 years most of the Australian States have imported their chief official, whether entitled commissioner or general manager, from England. They have not had the pick of the English railway service. For neither in authority nor in compensation is the position in Australia comparable to that of a general manager of one of the great English railways. And yet the practice continued. What shall be said of an organization which can not train its own young men to become chief executives? That the men are there, there can be no doubt. No one would suggest that the average Australian is inferior to the average Englishman. Is not the reason that, in a commercial concern, promotion by merit not only brings the best men to the top, but stimulates every man to do his best, while Government service usually only gets work done at the rate of what is known in England as the "Government stroke."

#### POLITICS IN BELGIUM.

The history of Belgium affords a singular contrast to that of Australia. There has been no attempt to interpose a buffer authority between Parliament and the railways. The political minister is frankly the head of the railway system. And what is more remarkable the same political party—called Catholics by themselves and Clericals by their opponents—have been in power for 32 consecutive years, and up to the time of the war they showed no signs of losing their hold on the management of affairs. It is claimed by the Liberal and Labor opponents of the present ministry that this long tenure of office is in large measure due to the patronage and influence which their possession of the railways give them. Certain it is that about 6 per cent of the total votes polled—in Belgium voting is compulsory—are those of the railway staff. Certain it is, too, that the State administration does not err on the side of employing too small a staff. Per kilometer of line open it employs 19.1 persons while the Northern Railway Co. of France on its lines in Belgium, where the traffic is certainly not below the average of the State system, only finds it necessary to employ 12.91. It is certain also that while the goods rates, which are only directly paid by a few persons, have been maintained unreduced—it is fair to remember that even now they are the lowest in western Europe—passenger fares, which appeal to the general public, have been brought down to a point which experts say results in an actual loss. The long-distance workmen's weekly tickets have often been referred to with admiration. In the case of the longest distance, the rate charged comes down to as low as 6 miles for 1 cent. Prof. Mahaim<sup>1</sup> regards these

<sup>1</sup> "Railways and the State," London, 1912.

workmen's tickets as "a boon which has rendered the population mobile and solves the problem of unemployment." The opponents of the ministry tell another story and assert that these tickets are issued in order to prevent workmen leaving the country districts, where they remain under the influence of their priests, and coming to live near their work in the towns, where they might be subject to other political influences. They assert that it is not in the interests of the workmen that they should be encouraged to live so far from their work that in extreme cases they have to leave home at 3.30 or 4 o'clock in the morning and only get back at 11 o'clock at night. And this view has very recently received support from one who can not be regarded as a political opponent. Writing in the *Independence Belge* for September 20, 1916, Father Rutten, a very well-known and influential priest and a strong supporter of the Government, says:

Better and cheaper connection with the suburbs will alone induce workmen to desert the crowded centers; but matters must not be pushed to the other extreme of further multiplying the workmen's fares. I have seen at too close quarters the demoralizing of the Flemish worker who has to spend every day four or five or even six hours on the railway, in crowded carriages in an atmosphere that in winter is not fit to breathe. Living in the country is all very well, but the benefits are greatly reduced by the necessity of these long journeys and by the hours spent in the saloons alongside the stations.

It may be added that, whatever the reason be, the ministry have been so strongly opposed to bringing workmen to reside in the big towns that not only have they done little or nothing to develop suburban traffic in the immediate neighborhood of Brussels, but they have steadily refused the request of the railway officials that workmen's cottages might be built near the big stations, so that men might be at hand at all times of the day and night for urgent requirements of snowstorms, accidents, and the like.

In the matter of train service, it will hardly be denied that the Belgian State railways are inferior to all their neighbors; every passenger entering Belgium from France is conscious of a marked slowing down of the train. Indeed, the international service between Ostend and the German frontier was so poor that the Prussian Government is understood to have threatened to divert the English mail via Holland and Flushing unless it was improved.

Antwerp and Brussels, the two principal towns in the country, with a population of over a million between them, are only 27½ miles apart. Until quite recently the best train took practically an hour over the journey. The slowness of the trains is partly to be explained by the fact that expenses have been rising fast in recent years, and the State administration has economized in road maintenance. And M. Mahaim gives figures, of which he apparently does not fully appreciate the significance, showing that while between 1901 and 1908 total operating expenses rose 25 per cent, road-maintenance expenditure only rose 1.7 per cent. And every railway man knows what this means. Nor can it be denied that the Belgian Government has been behind the times in necessary new capital outlay. To give one striking instance: A direct underground connection between the northern and southern stations at Brussels has been recognized as necessary for a quarter of a century. The work was only commenced just before the war, up to which time the only

access to the northern station was over a single track known to the Brussels newspapers, owing to the frequency of accidents on it, as "the death trap."

In Belgium the railway budget and the State budget are inextricably entangled. Promises have been frequently made that the two budgets should be separated, as in Switzerland and Italy, but hitherto the promises have not been carried out. Official figures do, indeed, give the total amount of the railway debt. But there are no separate railway loans; the whole money has in fact been raised on the general credit of the State. The railway accounts show a figure of some \$3,859,040 per annum charged as "sinking fund." But in fact no sinking-fund payment is really made, and the figure is a mere book entry.

When the Chicago & Alton Railway under Mr. Harriman's management went back into the old books, extracted items of what were really capital expenditures but which had been paid out of revenue, and then proceeded to capitalize the result, Americans denounced it as a financial scandal. But the example had been set by the State administration of Belgium some years before. In 1897 the ministry went back on the 63 previous budgets, extracted a host of small additions to works and equipment which had been charged to revenue under the category of renewals, making together a total of over \$2,122,472, and charged them back against capital.<sup>1</sup>

Efforts have been made from time to time not only to separate the railway budget from the general budget but to withdraw the actual management of the railways from the political minister. In 1905, for example, when M. Liebeart was minister of public works, the general management was, in the interests of discipline, handed over to an expert railway man. The reform immediately produced excellent results. But the deputies complained that their recommendations had ceased to be received with sufficient attention, and one of the first acts of M. Helleputte, who succeeded M. Liebeart as minister in 1907, was to resume all authority into his own hands. How that authority is exercised can be judged by one or two instances. According to the regulations, for every place vacant that is not open to competition a candidate must be entered on one of five categories. The first three categories are composed of sons of officials possessing various qualifications. The fourth category is composed of persons recommended to the minister's private secretary by senators, deputies, or priests. The fifth category comprises everybody else. The categories are taken in order. In practice the first three categories provide very few candidates, and, broadly, no one is ever appointed except from the fourth category, "recommended candidates." The railway officials have tried to mend matters by filling as many posts as possible by competition. The ministry fights against this encroachment on its influence. For instance, open competition for the posts of road foreman and running-shed foreman has been put a stop to. Promotion is nominally by seniority, except in cases of exceptional merit. In practice there is good reason to believe that the exceptional merit is mainly of a political kind. The superior officers are forbidden to mix themselves with politics, which, in practice, means that they are forbidden publicly to express opinions other than those of the Government.

<sup>1</sup> See the official "Compte Rendu" for 1912, p. A89.

Similarly the formation of associations among the rank and file of the staff is closely supervised.<sup>1</sup> It is claimed that, while Catholic workmen are free to associate as they please, associations of an opposite tendency live under a constant threat of dissolution.

Here is a quite recent story. On the occasion of the elections in June, 1912, as the result of orders direct from the cabinet of the minister himself, increases of wages were granted and paid to a large number of men on the very day before the vote was taken, and these increases were made to date back to the previous 1st January. The minister was accused in Parliament of having ordered these increases by telegraph; he replied that the accusation was not true. He was quite accurate in his statement. The order had been given by telephone.

As is well known, the Catholic Party is mainly composed of the Flemish portion of the population, while the Liberals and Socialists are mainly French and Walloon. Two somewhat amusing instances of the encouragement of Flemish aspirations may be given. The public notices in the stations at Brussels used to be in two languages—the French above the Flemish. Not long ago they were all taken down and stuck up again with the Flemish above the French. The Traveler's Guide used to be published in two editions. Of the French edition 80,000 copies were sold; of the Flemish 3,000. And it is alleged that, in order to get even the 3,000 sold, the French edition was allowed to go out of print before the demand was exhausted. To please the "Flamingants" the French edition has been abolished, and a single edition has been put out in both languages, naturally larger, more complicated, and less convenient.

Let us turn from the question of interference with the management of an undertaking belonging to the public at large in the interests of a single political party and note a result of State management of a quite different kind. Alongside of the Belgian State railway system proper there is a secondary system of light railways, under a management organized as a company, of which, however, the State and the various local authorities are practically the only shareholders. In this secondary system the State has only about 50 per cent interest, whereas it has a 100 per cent interest in the State railways proper. The minister of public works has control of the tariffs of the light railways, and exercises that control to prevent the light railways from reducing their tariffs—though it may be to the interest both of the light railways and their customers to do so—whenever it is feared that competition injuriously affecting the State railway revenues might result.

One word more as to Belgium. The same political party has, as has been said, retained control of the railways in Belgium for 32 years. But shortly before the war a commission was appointed to inquire into the whole subject. No report has been officially published. But it is a matter of public knowledge that the commission had determined to recommend that the construction of new lines should in future be intrusted to a contractor and not left in the hands of the railway administration; that they were seriously considering the grant of a lease of the State railways to an operating company; and that certain very influential persons were in favor of the adoption of this policy.

<sup>1</sup> See the regulations put out in March, 1910, which are to be found in the report of M. de Bue on the Railway Budget of 1911 in the "Documents Parlementaires."

## CONCLUSION.

President Hadley has summed up the conclusions of the Italian railway commission, based on the railway experience of the world as it existed 35 years ago, as follows:

(1) Most of the pleas for State management are based upon the idea that the State would perform many services much cheaper than they are performed by private companies. This is a mistake. The tendency is decidedly the other way. \* \* \* The State is much more likely to attempt to tax industry than to foster it.

(2) State management is more costly than private management. \* \* \*

(3) The political dangers would be very great. Politics would corrupt the railroad management, and the railroad management would corrupt politics. \* \* \*

In the foregoing pages an attempt—hampered by the condition that the most important facts of contemporary history are not always those that can be most readily published—has been made, subject to strict limitations of space, to bring the history up to date. And the conclusions of the Italian commission still seem to stand firm.

The essential lesson of the history may be said to be this: It is impossible to obtain satisfactory results on Government railways in a democratic State unless the management is cut loose from direct political control. Neither Australia nor any other country with a democratic constitution—perhaps an exception ought to be made of Switzerland—has succeeded in maintaining a permanent severance. The Australian Parliaments have loosened their hold for a few years, but only for a few years. In France, in Belgium, in Italy parliamentary interference has never been abandoned for a moment. Without imputing a double dose of original sin to politicians, it is easy to see why this happens. The railways belong to the people. Parliament is the authorized representative of the people. It seems therefore to the ordinary citizen only right and natural that Parliament should control the management of the people's railways. And yet facts are stubborn things; and the facts show that parliamentary interference has meant running the railways, not for the benefit of the people at large, but to satisfy local and sectional or even personal interests. They show further that, under parliamentary management, it is easier to get money for big schemes of new construction than for inconspicuous day-to-day betterments and improvements which probably would produce much greater public benefit. Some day, perhaps, having learned wisdom by experience, a parliament and a people may recognize that management for the people is not necessarily management by the people; that there are other branches of government, besides the judicial branch, unsuited for popular interference, and may establish a permanent State railway organization, with its own board of directors, with its own separate budget, and entirely independent of parliamentary control, but controlled like any private company by a judicially mined commission, required also like a private company to earn a dividend for its stockholders, the people. And then a main objection to Government railways in a democratic State will have lost its force. But hitherto no parliament and no people have recognized this fact, even though it stands out abundantly clear on the pages of railway history.

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## APPENDIX B

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### REPORT OF THE ROYAL COMMISSION TO INQUIRE INTO RAILWAYS AND TRANSPORTATION IN CANADA

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## COMMISSION.

[P. C. 1680.]

**CERTIFIED COPY OF A REPORT OF THE COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY THE DEPUTY OF HIS ROYAL HIGHNESS THE GOVERNOR GENERAL ON JULY 13, 1916.**

The committee of the privy council have had before them a report, dated June 12, 1916, from the right honorable the prime minister, submitting that it became necessary at the recent session of Parliament to make provision for assistance by loan to the Grand Trunk Pacific Railway Co. and to the Canadian Northern Railway Co., in order that such companies might be enabled to meet current obligations and to provide for payment of interest on outstanding securities.

Having regard to the conditions and necessities of railway development in Canada, the prime minister is of opinion that the situation should be considered in a comprehensive way and that a thorough inquiry should be made by a board of the highest ability and experience.

The prime minister further submits that the inquiry should have reference to the following matters:

1. The general problem of transportation in Canada.
2. The status of each of the three transcontinental railway systems—that is to say, the Canadian Pacific Railway system, the Grand Trunk Railway system (including the Grand Trunk Pacific Railway and the Grand Trunk Railway and their several branches) and the Canadian Northern Railway system, having special reference to the following considerations:

(a) The territories served by each system and the service which it is capable of performing in the general scheme of transportation.

(b) Physical conditions, equipment, and capacity for handling business.

(c) Methods of operation.

(d) Branch lines, feeders, and connections in Canada.

(e) Connections in the United States.

(f) Steamship connections on both oceans.

(g) Capitalization, fixed charges, and net earnings, having regard to (1) present conditions, and (2) probable future development with increase of population.

3. The reorganization of any of the said railway systems, or the acquisition thereof by the State, and in the latter case the most effective system of operation, whether in connection with the Intercolonial Railway or otherwise.

4. Generally speaking, all matters which the members of the board may consider pertinent or relevant to the general scope of the inquiry.

The prime minister therefore recommends as follows:

That Alfred Holland Smith, of the city of New York, in the United States of America; Sir Henry Lumley Drayton, of the city of Ottawa; and Sir George Paish, of London, England; be the members of the said board, of whom the said Alfred Holland Smith shall be chairman.

That the board be constituted under part 1 of the inquiries act and that it shall have all powers and authorities which could be conferred under the authority of that act, as amended by chapter 28, of the statutes of 1912, entitled "An act to amend the inquiries act."

That the provincial governments be respectfully requested to afford to the board any necessary information and cooperation in the inquiry.

That all the departments of the government shall afford to the board and to all persons acting under its authority and by its direction all such assistance and cooperation in the inquiry as the board may desire.

That the board of railway commissioners for Canada, the commission of conservation, and all other bodies of a like character under the jurisdiction of the Parliament of Canada, shall cooperate with and assist the board in the proposed inquiry.

That the board shall report its findings and conclusions with the least possible delay.

That a commission for the purposes aforesaid shall issue to the members of the board above designated.

The committee concur in the foregoing and submit the same for approval.

RODOLPHE BOUDREAU,  
*Clerk of the Privy Council.*

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[P. C. 2587.]

CERTIFIED COPY OF A REPORT OF THE COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY HIS EXCELLENCY THE ADMINISTRATOR ON OCTOBER 21, 1916.

The committee of the privy council have had before them a report, dated October 19, 1916, from the right honorable the prime minister, submitting that Sir George Paish has resigned his position as a member of the board, appointed by order in council of July 13, 1916, to inquire into and report upon the general problem of transportation in Canada, etc.

The prime minister further recommends that William Mitchell Acworth, Esq., gentleman, of London, England, be appointed a member of the said board of inquiry in place of Sir George Paish, resigned.

The committee concur in the foregoing recommendation and submit the same for approval.

RODOLPHE BOUDREAU,  
*Clerk of the Privy Council.*

*To His Excellency the Governor in Council:*

The report of the royal commission appointed to consider the general problem of transportation in Canada.

May it please your excellency, we, the commissioners appointed by order in council dated July 13, 1916, to inquire and report on the railways of Canada, have the honor to present our report to your excellency.

The subject matter of the reference to us is as follows:

1. The general problem of transportation in Canada.
2. The status of each of the three transcontinental railway systems—that is to say, the Canadian Pacific Railway system, the Grand Trunk Railway system (including the Grand Trunk Pacific Railway and the Grand Trunk Railway and their several branches), and the Canadian Northern Railway system, having special reference to the following considerations:

- (a) The territories served by each system and the service which it is capable of performing in the general scheme of transportation.

- (b) Physical conditions, equipment, and capacity for handling business.

- (c) Methods of operation.

- (d) Branch lines, feeders, and connections in Canada.

- (e) Connections in the United States.

- (f) Steamship connections on both oceans.

- (g) Capitalization, fixed charges, and net earnings, having regard to (1) present conditions, and (2) probable future development with increase of population.

3. The reorganization of any of the said railway systems, or the acquisition thereof by the State; and, in the latter case, the most effective system of operation, whether in connection with the Intercolonial Railway or otherwise.

4. Generally speaking, all matters which the members of the board may consider pertinent or relevant to the general scope of the inquiry.

Sir George Paish, one of the original commissioners, was, owing to ill health, unable to serve on the commission, and on October 31, 1916, his formal resignation was received and Mr. William Mitchell Acworth was appointed in his place. Mr. Acworth landed in America early in December and joined in our work.

In September and October two of the commissioners, the chairman, Mr. Alfred H. Smith, and Sir Henry Drayton, spent some weeks inspecting the railways, traveling upwards of 10,000 miles, visiting all important points from Halifax to Vancouver and Prince Rupert and taking the opportunity of meeting and conferring with many representative citizens. We desire to express our appreciation of the manner in which the officers of the various companies facilitated our journey and assisted us to obtain a knowledge of local conditions.

We have had a physical examination made, in such detail as circumstances have permitted, of the railways of the Canadian Northern and the Grand Trunk Pacific, by a corps of engineers under the supervision of Prof. Swain, of Harvard University and the Massachusetts Institute of Technology. His report is given in Appendix A.

In addition to the information which we have obtained from our own inquiries and inspections and those of our staff, we have received voluminous reports and statistics from the different companies in reply to our inquiries on specific points. Two of our number have

held formal hearings in Toronto into the affairs of the Canadian Northern Railway Co., and in Montreal into the affairs of the Grand Trunk and Grand Trunk Pacific companies.

Since Mr. Acworth's arrival we have frequently met in Ottawa and in New York for discussion of the remaining matters referred to us. We have taken the situation as it is, and find ourselves in agreement as to the necessity for constructive aid to bring the railways through the present crisis. We differ, however, as to the extent and method of Government help desirable and as to the increase and character of Government liability and interest now and for the future. It has therefore been found necessary to submit a report of the two concurring commissioners, with a brief statement of the minority recommendation. They will be found herewith.

Respectfully submitted.

A. H. SMITH.  
H. L. DRAYTON.  
W. M. ACWORTH.

## REPORT OF SIR HENRY L. DRAYTON AND MR. W. M. ACWORTH.

### INTRODUCTORY.

This commission is instructed by the Government to report on the "general problem of transportation in Canada, with the least possible delay." Under these conditions it has been clearly impossible for us to set on foot and await the result of exhaustive inquiries, and to elaborate in full detail a scheme based thereon. We believe that we shall best carry out the purpose which the Government has in mind in appointing us, if, after setting out the general situation as we see it, and the general conclusions at which we have arrived, we sketch in broad outline the scheme of readjustment which we recommend for adoption, and then indicate the manner in which, if and when our recommendations are approved by the Government and Parliament, those recommendations should be brought into practical operation.

### PART I. CANADIAN RAILWAYS.

#### MILEAGE, CAPITAL, AND STATE AID.

On June 30, 1916, the operating mileage of railways in Canada was officially reported to be as follows:

In operation, miles of first main track (less duplications through trackage rights).....	Miles. 37,434
Under construction, according to official reports and estimates.....	3,150
	40,584

This mileage, which we take in round figures as 40,000 miles, is very great as compared to the population of Canada, assumed to be something like 7,500,000 at the present time. It far exceeds that of the United Kingdom or France, with populations, respectively, of 46,000,000 and 40,000,000. It is roughly equal to that of the German Empire, with 67,000,000 inhabitants, and of India, with more than 300,000,000 people. It is only slightly behind Russia, with a

very rapidly growing population of 170,000,000. Putting Canada alongside countries more nearly comparable, we find that Australia with an area roughly corresponding to that of Canada, has 18,290 miles of line for 5,000,000 inhabitants. Argentina has 20,290 miles for the same population. To take yet another comparison, Canada has nearly one-sixth of the railway mileage of the United States; it has less than one-fourteenth of the population. Evidently, judged by the standards of other countries, the railway mileage of Canada bears a very high ratio to the population.

We may put the same thing in another way. The growth of the mileage has far outstripped the growth of the population. In 1901, with a population of 5,371,315, Canada had 18,140 miles of railway in operation; roughly, a mile of railway for every 300 inhabitants. In 1911, the population had increased 34 per cent, to 7,206,643, while the mileage had increased by 40 per cent to 25,400 miles; a mile of railway to every 284 inhabitants. Since 1911 the population has, it is understood, not much increased, but the railway mileage, open and under construction, has grown to 40,584 miles. In other words, Canada has, to-day, taking the present population as 7,500,000, only 185 inhabitants to support each mile of railway. Taking the four western Provinces by themselves, there are only two-thirds of this number for each mile of railway. The United States has 400 inhabitants per mile of line; the United Kingdom, 2,000; Russia, 4,000. Even Australia has 274 inhabitants for each mile of railway; Argentina, 238. And Canada has, what none of these other countries have to a comparable degree, a magnificent internal system of natural waterways, which must always, so far as can now be foreseen, carry a very large proportion of the total traffic. Of course, if mileage be taken in relation not to population, but to area, Canada, so far from being at the top, comes far down in the scale. But area means potentialities, not actualities. Population alone can supply traffic. That the railway mileage already built will be insufficient for the Canada of the future we doubt not. The question which concerns to-day is the relation of existing mileage to the circumstances of the present and the proximate future.

These facts are fundamental, and must be steadily borne in mind in any consideration of the future of Canadian railways.

#### APPORTIONMENT OF MILEAGE.

Of the mileage owned and in operation on June 30, 1916, (1) there were in the hands of the Dominion Government:

	Miles.
Intercolonial.....	1,514
Prince Edward Island.....	275
Transcontinental.....	1,810
	<hr/> 3,599

(2) The mileage (excluding trackage rights) of the four large private operating systems was:

	Miles.
Canadian Pacific.....	12,900
Canadian Northern.....	9,648
Grand Trunk.....	3,556
Grand Trunk Pacific (excluding Branch Lines Co.).....	1,964

28,068

## (3) There were operated—

	Miles.
By other companies and provincial governments.....	6,366
Total.....	34,434

Included in the mileage of "other companies" is the following mileage operated or controlled by United States corporations:<sup>1</sup>

	Miles.
Great Northern.....	575
Michigan Central.....	381
New York Central.....	103
Boston and Maine (including Maine Central).....	41
Pere Marquette.....	199
Total.....	1,299

This is more than counterbalanced by Canadian companies' mileage in the United States, as follows:

	Proprietary. <sup>2</sup>	Leased. <sup>2</sup>	Controlled.	Total.
Canadian Pacific.....	145	32	4,771	4,948
Grand Trunk.....			1,868	1,868
Canadian Northern.....	44	181		225
Total.....	189	213	6,639	7,041

## REVENUE, GROSS AND NET.

For the year ending June 30, 1916, the gross earnings of the railways reporting to the department of railways and canals, which include, in addition to Canadian mileage, the proprietary and leased, but not the controlled, mileage of Canadian companies in the United States, were \$261,888,654, or practically \$7,000 (\$6,997) per mile of road operated otherwise than under trackage rights.

For the principal systems, which together are responsible for 87 per cent of the total earnings, the gross operating revenues per mile operated during the year were as follows:

Road.	Operating revenue.	Average mileage (including trackage) operated during the year.	Per mile of average mileage operated during year.
Canadian Pacific.....	\$124,654,571	12,994	\$9,583
Canadian Northern.....	35,476,275	9,702	3,657
Grand Trunk.....	39,155,040	3,565	10,953
Grand Pacific (excluding Branch Lines Co.).....	6,963,188	1,968	3,538
Transcontinental.....	5,798,516	2,002	2,896
Intercolonial.....	15,686,662	1,553	10,101

<sup>1</sup> This list is not exhaustive and only gives important companies.

<sup>2</sup> These lines are essential parts of the parent systems, but organized separately for international reasons.

The net operating revenues and the average per mile operated during the year were as follows:

Road.	Net operating revenue.	Per mile of average mileage operated during year.
Canadian Pacific.....	\$46,416,743	\$3,572
Canadian Northern.....	10,232,088	1,054
Grand Trunk.....	10,373,027	2,909
Grand Trunk Pacific (excluding Branch Lines Co.).....	1,000,346	539
Transcontinental.....	429,455	214
Intercolonial.....	2,363,478	1,522

In addition to the revenues from rail transportation and services incidental thereto, the Canadian Pacific reported revenues from boat lines, commercial telegraphs, hotels, and news departments of \$22,834,095 gross and \$6,034,340 net.

#### INVESTMENT IN ROAD AND EQUIPMENT.

At the close of the year ended June 30, 1916, the investment in road and equipment as carried on the books of the companies or the Government was as follows:

Road.	Book value of road and equipment.	Miles owned.	Per mile.
Canadian Pacific.....	\$530,788,978	7,779	\$68,233
Canadian Northern.....	494,762,489	9,002	54,961
Grand Trunk.....	424,160,310	3,331	127,340
Grand Trunk Pacific (excluding Branch Lines Co.).....	192,312,218	1,962	98,018
Transcontinental.....	150,881,894	1,810	83,332
Intercolonial.....	116,234,204	1,514	76,773
	1,918,149,008	25,398	75,524

The book value of road and equipment is not to be regarded as accurately representing the actual cost of the property. "Cost of road and equipment," as set up on the books of a company, frequently represents not the actual cash outlay but the par value of the bonds and shares which have been issued to obtain cash or property. "Cost of road and equipment" may therefore include the par value of securities issued to obtain money for interest during construction, discounts on securities sold, and other items not strictly construction cost. And it may include sums to offset the par value of securities which have been issued for other than a cash consideration. For example, the Grand Trunk Pacific has \$25,000,000 and the Canadian Northern has \$100,000,000 of ordinary stock outstanding, neither of which issues represents more than a nominal sum of actual cash paid in. On the other hand, the Canadian Pacific Railway accounts shows that this company has received premiums of \$45,000,000 upon the \$260,000,000 of ordinary stock sold. These premiums are invested in the general assets of the company in the same manner as the proceeds of the stock itself.

If the sums mentioned for the Grand Trunk Pacific and Canadian Northern be deducted from the book account "Cost of road and equipment," the statement becomes:

	Cost of road and equipment.	Miles owned.	Average per mile.
Canadian Northern.....	\$394,199,130	9,002	\$43,798
Grand Trunk Pacific.....	167,312,218	1,962	85,276

#### RETURN ON CAPITAL.

The net operating revenues have already been stated. Taking in taxes, rents, and similar items, which relate to operation, the relation of the net operating income to cost of road and equipment comes out as follows:

Road.	Net operating revenue.	Net rents, hire of equipment, taxes, etc.	Total.	Per cent on property investment.
Canadian Pacific Railway.....	\$46,416,743	<sup>1</sup> \$2,109,477	\$44,307,266	8.34
Canadian Northern.....	10,232,088	<sup>1</sup> 1,241,465	8,990,623	2.28
Grand Trunk.....	10,373,027	<sup>1</sup> 486,926	9,903,101	2.33
Grand Trunk Pacific (excluding branch lines)...	1,060,346	<sup>1</sup> 1,153,283	2,213,629	1.15
Transcontinental.....	429,455	<sup>1</sup> 1,371,070	<sup>1</sup> 948,615	( <sup>2</sup> )
Intercolonial.....	2,363,478	167,214	2,196,264	1.88

<sup>1</sup> Debit.<sup>2</sup> Credit; estimated.<sup>3</sup> Deficit.

With the exception of the first-named railroad, the return is so low as to afford further support for the view which we have suggested, that the country has built more railroads than can be justified on commercial grounds.

#### GOVERNMENT AID IN GENERAL.

The geographical location and climate of Canada are such that easy communication with the settled districts had to be established before any large permanent population could find means of support in the newer country. Without railways the rich grain-growing Provinces of the West would have remained a hunting and trapping district, or at best a grazing section, because it would have been impossible to get out the grain which constitutes the chief product of those Provinces. The people have been liberal in promoting railway building in advance of their profitable operation on a commercial basis. Great grants of land have been given to the two principal systems in the West. But without these railways the land would have been practically valueless. Cash aid has also been voted liberally. The total for this purpose up to June 30, 1916, is reported as \$116,000,000 by the Dominion Government, about \$30,000,000 by the Provinces, and \$12,000,000 by municipalities. The Governments, both national and provincial, have frequently entered directly upon construction projects when private capital could not be found; as for instance the Dominion Government in the case of the Hudson Bay Railway, and the Ontario Government in the case of the Temiskaming & Northern Ontario. They have also extended large

assistance to private companies by direct loans, by purchase of their securities, and by guaranties. These have grown to large sums. By far the largest part, though not all, of the aid of this kind is to be found in the principal systems. We give the detail as follows:

## GOVERNMENT AID TO CANADIAN NORTHERN.

According to the reports of the Statistical Bureau of the Department of Railways and Canals, the roads composing the Canadian Northern System had received assistance up to June 30, 1916, as follows:

## (1) Subsidies:

Paid by Dominion Government.....	\$31,286,720
Paid by Provinces.....	6,821,724
Paid by municipalities.....	765,704
	<hr/> 38,874,148

The total amount reported by the Canadian Northern Co., as received upon the foregoing account, is \$33,917,175. The difference is explained by the fact that the Government reports comprise aid granted to companies now included in the Canadian Northern System prior to their inclusion.

## (2) Land grants.

Location.	Received.	Of which sold.
	<i>Acres.</i>	<i>Acres.</i>
Nova Scotia.....	150,000	150,000
Quebec.....	402,860	.....
Ontario.....	2,000,000	.....
Manitoba, Saskatchewan, Alberta.....	4,002,848	3,159,720
	<hr/> 6,555,708	<hr/> 3,809,720

Amount realized from land sales, \$16,603,295.

The company appraises its unsold lands at \$19,885,485, present value.

(3) *Guarantees*.—As at June 30, 1916, the company had outstanding securities bearing the guarantee of the Dominion or Provincial Governments as follows:

## Guaranteed by—

Dominion of Canada.....	per value..	\$104,613,247
Province of Alberta.....	do....	18,950,361
Province of Saskatchewan.....	do....	14,762,546
Province of Manitoba.....	do....	25,501,865
Province of Ontario.....	do....	7,859,997
Province of British Columbia.....	do....	39,953,124

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211,641,140

The foregoing represents the bonds reported by the company as guaranteed and outstanding. Provincial reports indicate that additional guarantees have been made, especially by Alberta and Saskatchewan. These presumably are related to mileage on which the guarantees have not yet been earned. Some of these projects are apparently in abeyance, and may perhaps be abandoned.

(4) *Loans*.—The Canadian Northern has had direct loans from the Dominion Government:

July, 1914, secured by mortgage.....	\$858, 166
October, 1914, secured by deposit of \$12,500,000 of 4 per cent Government guaranteed debentures, included in above mortgage.....	10, 000, 000
June, 1916, secured by mortgage.....	15, 000, 000

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25, 858, 166

Summary:

Subsidies.....	38, 874, 148
Land grants (sold, \$16,603,295; realized on mortgage \$17,776,514)....	34, 379, 809
Cash loans (interest not being paid).....	25, 858, 166
Securities guaranteed.....	\$211, 641, 140
Less Government guaranteed debentures held as collateral.....	12, 500, 000

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199, 141, 140

Total public assistance, direct and indirect..... 298, 253, 263

The company has not realized par value for all the securities guaranteed; \$60,292,700 par value are pledged as collateral security for loans, of which \$10,000,000 have been, as stated above, lent by the Government; the balance has been lent by private investors.

GOVERNMENT AID TO CANADIAN PACIFIC.

Some time prior to 1880, the Dominion Government undertook the construction of a road that was designed to be a link in a trans-continental line. In that year the Canadian Pacific Railway Company was organized for the purpose of completing the line. The assistance given to the company by the Government comprises the following:

(1) *Railroad handed over*.—The cost of road and surveys made by the Government, and turned over to the company free of cost, was \$37,785,320.

(2) *Cash aid*:

By Dominion Government to Canadian Pacific Railway Co.....	\$30, 289, 343
By Dominion Government to subsidiary companies.....	13, 129, 873
By Provincial Governments to Canadian Pacific Railway Co.....	412, 878
By Provincial Governments to subsidiary companies.....	12, 016, 257
By municipalities to Canadian Pacific Railway Co.....	464, 761
By municipalities to subsidiary companies <sup>1</sup> .....	4, 632, 422
By Dominion Government (by purchase back of land previously granted)	10, 189, 521

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71, 135, 055

Deduct loans since repaid..... 4, 229, 574

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Total cash aid..... 66, 905, 481

(3) *Land grants*:

	Acres.
By Dominion (excluding land repurchased).....	21, 634, 190
By British Columbia.....	6, 388, 998

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28, 023, 188

Land sales to June 30, 1916..... 16, 541, 056

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Land still in hand, acres..... 11, 482, 132

Proceeds of lands and town sites to June 30, 1916, \$123,810,124.

The company's report for June 30, 1916, shows net proceeds from land sales as \$68,255,803. The difference, it is understood, represents expenditure by the company for development projects, irrigation, hotels, etc., and, in some cases, dividends.

The unsold lands of the company are carried in its accounts at \$119,250,000.

**Summary:**

Completed road and surveys, cost Government.....	\$37, 785, 320
Cash subsidies.....	66, 905, 481
Lands sold.....	123, 810, 124

Total public assistance, direct and indirect.....<sup>1</sup> 228, 500, 925

Further, indirectly, the Canadian Pacific has had Government aid the value of which can not be determined, such as right to take public land free for railway purposes; various loans (since repaid); certain exemptions from taxes; admission of original construction material free of duty; and other concessions.

**GOVERNMENT AID TO GRAND TRUNK.**

According to Government reports, the roads now comprised in the Grand Trunk Railway Co.'s undertaking have received aid as follows:

(1) Subsidies:	
Dominion Government.....	\$3, 423, 699
Provinces.....	4, 077, 233
Municipalities.....	5, 502, 128
	<hr/> 13, 003, 060
(2) Loan:	
The Dominion Government made to the Grand Trunk Railway Co. many years ago a loan (interest on which has never been asked for or paid), amounting to.....	15, 142, 633
Total.....	<hr/> 28, 145, 693

**GOVERNMENT AID TO GRAND TRUNK PACIFIC.**

(1) Subsidies:	
Provincial.....	\$376, 320
Municipal.....	350, 000
Total.....	<hr/> 726, 320
(2) Other cash aid:	
Under the "implementing clause" the Dominion Government has paid to the Grand Trunk Pacific.....	6, 263, 716
It has also lent upon or bought securities as follows—	
May, 1909, 4 per cent Prairie Section bonds bought at par....	<sup>2</sup> 10, 000, 000
August, 1913, 4 per cent debentures due in 1923, bought at par.....	<sup>2</sup> 15, 000, 000
Loan of 1914, secured by pledge of \$7,500,000 of 4 per cent bonds.....	6, 000, 000
1913-14, 3 per cent first mortgage bonds (bought from company).....	33, 048, 000
Direct investment of Dominion Government.....	<hr/> 70, 311, 716

Loans to the amount of \$8,000,000 were authorized by Parliament in 1916. Advances under this authority are not here included, but are referred to subsequently.

<sup>1</sup> It must be noted that this sum is not net to the company, as it represents the gross receipts, while the company has expended large sums of money in irrigating a portion of the lands sold. As pointed out, however, the company values its unsold lands at \$119,250,000.

<sup>2</sup> These securities are guaranteed by the Grand Trunk Railway Co. of Canada.

(3) *Guarantees.*—The Dominion Government has also guaranteed outstanding bonds of the Grand Trunk Pacific in addition to those actually held by the Government:

First mortgage, 3 per cent bonds.....	\$34,992,000
4 per cent sterling bonds of 1962.....	8,440,848
	<b>43,432,848</b>
Summary:	
Subsidies and other cash aid.....	6,990,036
Dominion Government investment in securities.....	64,048,000
Dominion Government guarantees.....	<b>43,432,848</b>
Total.....	<b>114,470,884</b>
The Grand Trunk Pacific Branch Lines Co. has also Provincial guarantees on bonds outstanding to the amount of.....	13,469,004

#### TOTAL PUBLIC INVESTMENT.

We tabulate the above figures for all the companies together and add to them the capital of the Government railway as shown in the Government account.

	Subsidies.	Proceeds of lands sold.	Loans outstanding or investment.	Guaranties outstanding.	Total.
Canadian Northern.....	\$38,874,148	\$34,379,800	\$25,858,166	\$190,141,140	<b>\$299,252,253</b>
Canadian Pacific.....	104,690,801	123,810,124			<b>228,500,925</b>
Grand Trunk Railway.....	13,003,060		15,142,633		<b>28,145,693</b>
Grand Trunk Pacific.....	726,320		70,311,716	43,432,848	<b>114,470,884</b>
Grand Trunk Pacific Branch Lines.....				13,469,004	<b>13,469,004</b>
National Transcontinental.....			159,881,197		<b>159,881,197</b>
Intercolonial.....			116,234,204		<b>116,234,204</b>
Prince Edward Island.....			9,496,567		<b>9,496,567</b>
Total.....	<b>157,294,329</b>	<b>158,189,933</b>	<b>366,924,483</b>	<b>266,042,992</b>	<b>\$968,451,737</b>

<sup>1</sup> Includes railroad turned over to company.

Not counting the loss of interest for many years upon the investment in roads operated by the Government, it appears that for the eight systems, in which the public is most interested, the people of Canada, through their Governments have provided, or guaranteed the payment of, sums totaling \$968,451,737. This works out at over \$30,000 per mile of road. But even this is not all. In addition, they have granted great areas of land as yet unsold and unpledged. They have undertaken the construction of other lines whose cost will be an important addition to this large outlay. Further, in the case of some of the companies included above, to which they have given or lent large sums of money to meet pressing needs, unlike private lenders, who would naturally have demanded a security charged in front of all previous investment, they have voluntarily accepted a charge ranking after the bulk of the private capital already put into the undertaking.

#### PROPORTION OF PUBLIC INVESTMENT.

We pause at this point in the history to interpose some remarks on a subject to which we shall have to revert more at length hereafter. The above figures show that the Grand Trunk Pacific system, in-

cluding its "branch lines" has obtained from the public authorities in cash or in guarantees of bonds, \$127,939,892, out of \$197,129,391<sup>1</sup> which is given as the total cost of the property; and the Canadian Northern has similarly obtained \$298,253,263 out of \$370,302,451, which is the maximum possible cash cost of the property as far as we have been able to ascertain it. On the other hand, the history shows that the Grand Trunk Railway proper has received much less assistance than either of the other two great companies with which it is in competition. The Grand Trunk began as long ago as 1851, before the Dominion of Canada came into existence, and before the modern policies of subsidies and guarantee had been introduced. In the main it has had to rely throughout its history on its own resources, and it has had for many years to compete with heavily subsidized rivals. While it was the pioneer in giving to Canada railway service, its shareholders have never had but very moderate dividends. We have felt this should be borne in mind when dealing with the question of the Grand Trunk Pacific, and it has had some influence on the recommendations which we make later on this subject.

#### HISTORICAL DEVELOPMENT.

The railway history of Canada has gone through three distinct phases. In the first period the Grand Trunk came into existence almost entirely as the result of the investment of private capital. It is comparable in this respect with the private railway companies of England and the United States.

In the second period the Canadian Pacific was brought into existence and carried through its early difficulties by direct Government support and large financial assistance from public funds. As a result of this support and assistance, coupled with the rapid growth of Canadian population and wealth, and its own wise and prudent management, the Canadian Pacific has "made good." It has raised, without further Government help, hundreds of millions of new capital. Its common stock, which carries control of the property, represents an average of \$112.50 of actual cash put into the property for every \$100 of nominal face value. The shareholders have for years received handsome dividends; they have, out of operating surplus, invested \$100,000,000 in subsidiary undertakings; they have realized \$68,000,000 net from land sales, and they still possess land conservatively valued at \$119,000,000. Against no part of this total value has any capital been issued. To-day the Canadian Pacific stands as one of the wealthiest and financially strongest railway companies in the world; fully able to raise, on its own credit and on the most favorable terms, all the new capital which will be required to meet the demands for new development that the future will bring.

The Canadian Northern and Grand Trunk Pacific belong to the third period. Though the outward form of these two undertakings is that of a private company, substantially they both rest on the responsibility of the Governments, National and Provincial. Their common stocks, which carry with them control of the respective properties, represent no practical cash investment, and both companies have failed to "make good." They are kept going at present only through large advances of public money.

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<sup>1</sup>As reported to Parliament, Feb. 29, 1916. This figure includes \$26,978,130 interest during construction.

We think the success of the Canadian Pacific Railway, as contrasted with the fact that the Grand Trunk Pacific and Canadian Northern have had to come back to the Government for help far beyond that originally contemplated, points a distinct moral. There was given to the Canadian Pacific at the outset direct aid with a generous hand, and the aid was continued up to the point when the company could stand alone. The country knew what it was paying. Had it known how splendid a property it was building up it would no doubt have stipulated for some share in the reversion. But even as it is, the people of Canada, in our view, have had good value for their money. In the early days of the Canadian Northern no direct aid was given other than a comparatively small grant of land, at the time almost valueless. Since then the company has received \$38,874,000 in subsidies; but this is very small in proportion to the direct aid given to the Canadian Pacific. Great sums of money were indeed guaranteed by the Dominion and the Provinces, but up to 1914 the company apparently met its obligations from its own resources. To the Grand Trunk Pacific direct aid was indeed given to a considerable extent, but the financial scheme mainly relied on guaranties, first by the Governments, and secondly by the Grand Trunk Co. We do not think the Governments, either of the Dominion or of the Provinces, fully realized how serious was the liability which they were assuming. We do not think the companies realized how serious the position would be if recourse had to be had to the guaranties. While we are not prepared to say that in no circumstances should guaranties be given, we do feel that a policy of guaranties on a large scale is a dangerous policy. It is evident that guaranties have been given in the past without adequate appreciation of the fact that they might fall due, and that if they did, the burden would be grave. We recommend that in future no guaranties be given without being taken up into the books of the guarantor as a continuing liability and without some financial provision being made against the possibility of their falling due.

#### GROWTH OF CANADIAN RAILWAYS.

Till within the last decade, Canada was (omitting the Intercolonial Railway and other smaller undertakings of only local interest) served by two main systems. They were:

(1) The Canadian Pacific, stretching right across the continent, and having access to all important points both in the east and in the west, with control also of a considerable mileage in the United States, and in a very prosperous financial position.

(2) The Grand Trunk, whose original charter dates from 1851, with a strong hold on eastern Canada, and also with important United States connections. The Grand Trunk had always met its obligations, though over a series of years the return to its shareholders had been but small. Westward the Grand Trunk only extended, in Canada, as far as Lake Huron.

(3) But even 10 years ago, the Canadian Northern, which had started as a local line in Manitoba in 1896, was beginning to build up in the prairie provinces a system which, in 1906, comprised more than 2,400 miles, and which now contains over 5,000 miles in

these provinces. The Canadian Northern had grown rapidly with the growth of the western country, but had always earned sufficient net revenue to take care of its obligations.

The Canadian Pacific had, it will be seen, the advantage of gathering its own traffic for itself and of keeping it in its own hand throughout. The other two companies were in a different position. The Canadian Northern had to depend for westbound rail traffic on what the companies in the east, one of which was a rival, handed to it. On the traffic which it collected in the west, it lost the long haul to the east. It was not unnatural that the company should reach out to the east. For the same reason it was equally natural that the Grand Trunk Co. should reach out to the west. And public sentiment, which felt that the growth of the country justified and required more than one transcontinental line, undoubtedly sympathized with the companies' ambitions.

The natural solution of the question undoubtedly was that the Canadian Northern and the Grand Trunk should join forces and construct a line from North Bay, or its neighborhood, to Port Arthur. Negotiations for the amalgamation of the two companies were, we understand, actually set on foot in 1903. Unfortunately they came to nothing; and each company set out independently to construct into the territory of the other. And a very large measure of Government help was given to them both, with the result—hardly, we think, with the deliberately contemplated object—of obtaining not merely two but three transcontinental routes. An uninformed and unreasonably optimistic public opinion undoubtedly supported this action at the time. We can not, however, but feel that those responsible for the policy of the Grand Trunk and Canadian Northern Companies should have been wiser than the public.

## PART II. THE GRAND TRUNK SYSTEM.

The Grand Trunk scheme, first put forward in 1903 under two acts of Parliament, both dated October 24, 1903, was for a main line right across the continent from Moncton to Prince Rupert. The portion of the line east of Winnipeg was to be built by the Government and leased to the Grand Trunk Pacific Co. for 50 years certain, with a possibility of renewal. The portion west of Winnipeg was to be built by the Grand Trunk Pacific Co., with large Government assistance. The Grand Trunk Pacific was to build any necessary branches of the system both east and west, and was to operate the whole. The Grand Trunk was to hold, and in fact always has held, the entire share capital of the Grand Trunk Pacific, and the Grand Trunk has had full control of the undertaking throughout.

In fairness to the Grand Trunk it should be observed that the responsibility for the construction of the line from Moncton to Winnipeg, now known as the National Transcontinental, does not primarily rest on them. The proposal of the company, as originally formulated and submitted to the Government, was for a line from the Pacific through Winnipeg as far as North Bay. Government action was responsible for the line being carried eastward all the way to Quebec, and the further prolongation from Quebec to Moncton was added during the passage of the bill through Parliament.

But though the Grand Trunk did not originate the National Transcontinental, it accepted full liability for it. The agreement between the Grand Trunk Pacific and the Dominion Government provided as follows: "In order to insure, for the protection of the company as lessees of the eastern division of the said railway, the economical construction thereof in such a manner that it can be operated to the best advantage, it is hereby agreed that the specifications for the construction of the eastern division shall be submitted to and approved of by the company before the commencement of the work, and the said work shall be done according to the said specifications, and shall be subject to the joint supervision, inspection, and acceptance of the chief engineer of the company."

Upon this provision the Grand Trunk Pacific Co., in an official publication, "The Grand Trunk Pacific; Canada's National Transcontinental Railway; 10th edition, January, 1912," comments as follows:

Since the rental payable by the company to the Government for the use of the Eastern Division is a percentage on the cost of construction, it will be observed that it is a matter of great importance to the company that this item "cost of construction" shall be determined on the most economical basis consistent with a well-built railway, in which respect the foregoing provision contained in the agreement fully protects the company.

The company, then, appreciated that "cost of construction" was to it a matter of great importance, and considered that it was fully protected by the terms of the agreement. But as, in spite of the right of the company to approve specifications and the right of the company's chief engineer to supervise and inspect the work, the cost of construction of the National Transcontinental, which had been estimated at \$61,415,000, was permitted to reach \$159,881,197, the company objected to carrying out their bargain. And the Government, by accepting the company's refusal and commencing to work the line themselves, have in effect released the company unconditionally. The National Transcontinental is now a part of the Government Railways. We make at this stage only two comments on what is past history: The one that the people of Canada have been generous to the shareholders of the Grand Trunk Pacific; the other that the Grand Trunk Pacific shareholders, in other words, the Grand Trunk Co., have not shown such prudence and business foresight as would naturally encourage the Government to have confidence in their future management.

The refusal of the Grand Trunk Pacific to take over the operations of the line from Winnipeg to Moncton, with the result that the eastern half of the intended through route is being operated by the Government, has implied the temporary failure of the complete scheme as approved by Parliament. The line west of Winnipeg is at present being operated under the control of the Grand Trunk, the nearest point of whose rails is at North Bay, a thousand miles away. It would clearly be impossible for the Government to permit this as a permanent policy.

#### GRAND TRUNK PACIFIC FINANCE.

The original scheme for financing what was then known as the Western Division of the Grand Trunk Pacific—that is, the entire line as now left after the Government has assumed the responsibility for the Eastern Division—was as follows: The line was divided into two

sections, the Prairie section (914 miles) from Winnipeg via Edmonton to Wolf Creek, Alberta; and the Mountain section (832 miles) from Wolf Creek to Prince Rupert. On the Prairie section the Government guaranteed 50-year first mortgage 3 per cent bonds of the Grand Trunk Pacific, to the amount of \$13,000 per mile. On the Mountain section it guaranteed similar bonds to the extent of 75 per cent of the total cost, whatever that might thereafter be ascertained to be. The balance of the cost of both sections was to be found by the issue of 4 per cent mortgage bonds of the Grand Trunk Pacific guaranteed by the Grand Trunk Co. These latter were, in effect, second-mortgage bonds, though not so called. The Lake Superior Branch was built by the company from the proceeds of its own bonds, with the help of subsidies both from the Dominion Government and from the Province of Ontario.

First-mortgage bonds were issued to the amount of \$68,040,000, and owing to subsequent arrangements with the Government, which it is not necessary here to describe, the company obtained their full par value in cash. There were also issued \$20,169,000 of second-mortgage bonds, \$7,583,000 Lake Superior Branch bonds, which together produced \$25,734,915.81 in cash. The \$93,774,915.81 proved entirely inadequate to complete the system. By an act of 1906, as amended in 1913, the Grand Trunk Pacific was empowered to create 4 per cent perpetual debentures to the amount of \$50,000,000 for the purchase of rolling stock and the acquisition of branch lines. These debentures are guaranteed by the Grand Trunk Co. and various amounts have been issued from time to time. On January 1, 1917, \$34,879,252.86 of them had been sold to the public, and had produced \$31,411,985.96 in cash. In May, 1909, the Government lent to the Grand Trunk Pacific Co. \$10,000,000 at 4 per cent, charged by way of further mortgage upon the Prairie Division, and also guaranteed by the Grand Trunk Co. In June, 1913, the Government lent to the Grand Trunk Pacific Co. a further sum of \$15,000,000, charged upon an equal amount of 4 per cent Prairie debentures, guaranteed by the Grand Trunk Co., and issued to the government. In June, 1914, the Government guaranteed a further issue of not exceeding \$16,000,000 4 per cent Grand Trunk Pacific bonds. Part of these were sold, another portion was issued and pledged to the Government as security for a cash loan of \$6,000,000. The company has also raised \$9,095,512.05 by the issue of \$9,720,000 notes guaranteed by the Grand Trunk and further secured by the deposit of \$14,580,000 of debenture stock. In all, the Grand Trunk Pacific Co. had, up to the end of February, 1916, issued securities to the amount of \$179,782,100.86, and obtained therefor \$172,009,663.62 cash. Since that date the company has obtained from the Government further advances of \$4,397,741.43, and the Government auditor has passed for payment another advance of \$940,585.

The Grand Trunk Pacific Branch Lines Co. has outstanding bonds for \$9,879,408 guaranteed by the Province of Saskatchewan, and \$3,589,596 guaranteed by the Province of Alberta; a total of \$13,469,004. For these bonds, \$12,688,544 in cash has been received.

The three railway companies composing the Grand Trunk Pacific Railway system) that is, the Grand Trunk Pacific, the Grand Trunk Pacific Branch Lines Co., and the Grand Trunk Pacific Saskatchewan Railway Co.) represent construction expenditure, according to the

report to the Government in February, 1916, of \$197,129,591. Owing to the long time during which the roads were treated as "under construction," no less than \$26,938,139 of this outlay is for interest. Since January 1, 1916, the line is officially in operation. It was open for traffic throughout 16 months earlier and considerable sections were in operation at a much earlier period.

The interest charges on the funded obligations and Government loans of these companies are approximately \$7,200,000 a year. There are further debts of the Grand Trunk Pacific and subsidiary companies to the Grand Trunk for advances amounting to \$26,341,040.53 and for interest thereon; 6 per cent on which, added to the other liabilities, brings the total interest charges of the undertaking to \$8,846,544.20 a year. As a partial offset, the Dominion Government is under an obligation to pay, without recourse, for seven years after completion, the interest on the Government-guaranteed first-mortgage bonds of the Mountain section, amounting to \$1,655,121.60 a year. Further, the system has a certain amount of net income. For the year ending December, 1916, the Grand Trunk Pacific proper showed net income of \$1,899,052. This figure, however, included \$600,000. rent of the Lake Superior branch leased to the National Transcontinental, and \$1,305,741, hire of equipment. There was an operating loss of \$922,398 on the branch lines. Altogether, in spite of losses on operation, the system had a net income before charges of \$826,653.

#### GRAND TRUNK FOR GRAND TRUNK PACIFIC.

The Grand Trunk Railway Co. stands as guarantor of the following outstanding debentures and bonds issued and loans made to the Grand Trunk Pacific Railway Co.:

4 per cent Series A. Prairie Division.....	\$10,206,000
4 per cent Series B. Mountain Division.....	9,963,000
4 per cent Lake Superior Division.....	7,533,000
4 per cent perpetual debentures.....	34,879,252
5 per cent secured notes (secured by pledges of 4 per cent debentures).....	9,720,000
Canadian Government loan of 1913.....	15,000,000
Canadian Government loan of 1909.....	10,000,000

Total guaranties..... \$97,301,252

In addition, the Grand Trunk Railway Co. had, at February 29, 1916, advanced to the several companies the following sums:

Grand Trunk Pacific Railway Co.....	\$801,783.54
Grand Trunk Pacific Branch Lines Co.....	13,369,537.83
Grand Trunk Pacific Saskatchewan Railway Co.....	214,500.00
Grand Trunk Pacific Development Co. (Ltd.).....	11,793,907.46

Total advances..... 26,179,726

Total commitment of Grand Trunk Railway Co..... 123,280,980

In respect of these advances they hold the companies' notes to the amount of \$24,334,016.55.

We estimate the present annual liability of the Grand Trunk in connection with the Grand Trunk Pacific system to be considerably over \$5,000,000 per annum, and after January, 1923, it will increase to over \$7,000,000.

## GRAND TRUNK CO.'S PROPOSAL.

The Grand Trunk Co. have, in the letter of their president, addressed to the prime minister and dated December 10, 1915, officially acknowledged that they can not fulfill their obligations in reference to the Grand Trunk Pacific. The Grand Trunk Co. have already obtained a tacit release from their contract in reference to the trans-continental half of the original Grand Trunk Pacific undertaking. They have now, by their chairman's letter, put it on record that they are "at the end of their tether." They say that it is "quite impossible for them to meet the extra liabilities arising from the Grand Trunk Pacific Co." They propose to retire altogether from the concern; that in return for their handing over to Government the \$25,000,000 common stock of the Grand Trunk Pacific Railway, which is in their possession, but for which they only paid a nominal amount of actual cash, the Government shall not only relieve them of all liability for the interest on the securities of the Grand Trunk Pacific and subsidiary companies, and for any deficiencies of operating expenses of the Grand Trunk Pacific System, but shall "repay the Grand Trunk Railway Co. any money advanced to the Grand Trunk Pacific or its Branch Lines & Development Co. and other subsidiary companies."

We can not think that this is a reasonable proposition, or one that we could advise the Government to accept. What would be thought if one partner in a business were to say to the other: "We entered jointly on an enterprise which we thought would be profitable. It has turned out the reverse. I propose that you settle with the creditors, pay out to me the whole of the capital I put in, and let me retire. Provided I go free, I am content that you make what you can of the business." We think the Grand Trunk Co. can not thus escape the consequence of its own action. We quite agree that the Grand Trunk Co. can not meet its Grand Trunk Pacific liabilities. But if the Government is to relieve the Grand Trunk Co. of liabilities which it voluntarily incurred, but which it now finds it impossible to meet, it is for the Government, not for the company, to fix the terms.

## THE GRAND TRUNK CASE.

Having regard to the great importance of this question, not only to the Grand and Grand Trunk Pacific Cos., but also to the people of Canada before deciding what to report in reference to the present position, and what to recommend for the future, we gave to the management of these companies full opportunity to state their case. We invited them to put forward every ground on which they based their application that the Grand Trunk Co. should be relieved by the Government of their obligations in respect to the Grand Trunk Pacific, and have repaid to them by the Government their advances to the Grand Trunk Pacific Co. and its subsidiaries, which otherwise would be uncollectible. And we also investigated the physical and financial position of the companies.

In a letter addressed to Mr. Chamberlin, president of both companies, dated November 30, 1916, we wrote as follows:

Before looking into the Grand Trunk Pacific history from a parliamentary standpoint, I would like to have the company's own statement so as to make sure that no injustice will be done it.

Will you please write, or have Mr. Biggar write, giving the history of the project and the underlying motives and objects to be served, as the company understood them, and say to what, if to any extent, the company was prevented or hindered in carrying out its program. If Mr. Biggar has a series of draft acts showing changes from time to time made before the adoption of the final act that probably would be helpful.

To this letter Mr. W. H. Biggar, K. C., general solicitor for both systems, in a letter received by us on December 12, replied as follows:

#### INCEPTION OF THE NATIONAL TRANSCONTINENTAL.

The construction by the Grand Trunk interests of a line into the western Provinces appears to have been first suggested by Mr. Hays to the late Sir Charles Rivers Wilson, then president of the Grand Trunk, early in 1902. The correspondence between these two officials clearly shows that the chief purpose was the construction of a line to connect the Ontario lines of the Grand Trunk with the western Provinces. The general outline of the scheme having received the approval of the directors of the Grand Trunk in London, Mr. Hays, on October 23, 1902, submitted it to Sir Wilfrid Laurier, then Prime Minister. On November 3, 1902, probably at the suggestion of Sir Wilfrid Laurier, a memorial was addressed to him signed by the late Mr. Hays and the late Mr. Wainwright. The following extracts from that memorial show what was contemplated:

"Your petitioners desire to memorialize your Government in regard to the construction of a first-class line of railway from the northern terminus of the Grand Trunk Railway at or near North Bay, Ontario, through to the Pacific coast, for the reasons and upon the conditions herein set forth:

"First. That it is considered very desirable and in the public interest that there should be, without any unnecessary delay, a second transcontinental railway reaching from the Atlantic Ocean to the Pacific Ocean, in order that additional facilities may be provided for the large and growing business of the Northwest, which might otherwise find its outlet through American channels.

"Second. That your petitioners propose, as soon as authorized by your Government, to undertake the construction of such a line from North Bay, Ontario, or some other point north thereof, to be defined, to the Pacific coast, the terminus to be at or near Port Simpson: with all necessary branches along the route, to be designated.

"Third. That your petitioners therefore ask that their application for authority to construct such a line of railway to be called the Grand Trunk Pacific shall be granted.

"Eighth. That in order to provide for connection with the Atlantic seaboard all the year round and through an all-British territory route, your petitioners will be prepared to enter into an arrangement with the Government for an interchange of traffic or other satisfactory agreement with the Intercolonial Railway at Montreal, or such other proposal as the Government may submit.

"Ninth. That your petitioners would have the advantage of all the eastern connections, in Ontario and Quebec, of the Grand Trunk Railway, and by this means (on the completion of the transcontinental line) there would be established and opened up a complete system from ocean to ocean."

Shortly after this memorial was presented, Mr. Hays instructed that notice of an application to Parliament for an act to incorporate "The Grand Trunk Pacific Railway Co." be prepared and published. I inclose a copy of the notice marked "A." In accordance with an apparent understanding between Sir Wilfrid Laurier and Mr. Hays that notice was, before publication, submitted to and approved by the then minister of justice, now chief justice of the supreme court of Canada. Subsequently the bill, a copy of which marked "B" is also inclosed, was prepared and forwarded to the clerk of the house. In the early months of 1903, conferences were from time to time held between Mr. Hays and Mr. Wainwright on behalf of the company and Sir Wilfrid Laurier and members of his cabinet, as a result of which Mr. Hays was asked to have the bill amended to provide for the construction of a line from North Bay to Quebec. Not only do I personally know this to be the fact, but it is corroborated by a letter written to Sir Charles Rivers Wilson by Mr. Hays on March 16, 1903, in which he stated that "at the request of the Government we have amended our Grand Trunk Pacific charter taking powers to build a line from Quebec to North Bay." I inclose a copy marked "C" of the notice published in accordance with that undertaking. When the bill first came up for discussion before the railway committee of the House of Commons, such strong opposition developed that practically no

progress was made at that meeting nor, in fact, at several subsequent meetings of the committee. While the bill was thus under consideration, several members from the Maritime Provinces insisted that the eastern terminus of the line should not be Quebec but a point in the Maritime Provinces. So strongly was this view pressed that in the end the Government acquiesced and directed that the bill be further amended to include the construction of a line from Quebec to Moncton. I attach, marked "D," a copy of clause 13 of the bill reprinted by direction of the committee to give effect to this. Moncton was decided upon as a compromise, regard being had to the fact that both Halifax and St. John could be reached from there by the Intercolonial. As you will see, this clause as reprinted authorized the construction of branch lines to Fort William or Port Arthur and to North Bay. During all this time negotiations were still being carried on between the Government and the representatives of the company regarding the extent of and the terms upon which the Government should aid in the construction of the line. These resulted in the agreement of July 29, 1903, a copy of which forms the schedule to chapter 71 of the statutes of 1903. The facts herein stated, and the inclosures, show how the scheme as first outlined by Mr. Hays came to be so materially changed. That his original intention was not carried out was, to my personal knowledge, not due to a change of view on his part but because he came to the conclusion that the Government aid essential to the construction of any Grand Trunk Pacific line could only be secured upon the terms set forth in the agreement of July 29, 1903.

It is not necessary to reprint the exhibits referred to in Mr. Biggar's letter. They fully establish his statement that the original advertisement, the draft bill, and the notice of intention to apply for the act, were all merely for the construction of a line from a point at or near North Bay, in the Province of Ontario, and thence westerly. But Mr. Biggar's own letter shows also that the Grand Trunk Co., however reluctantly, did accept, as the only consideration on which they could get authority and assistance to construct and operate the Grand Trunk Pacific line from Winnipeg westward, the obligation to operate also the line from Winnipeg eastward. But this point is not of importance, as the company has, in effect, been released from the obligation that it assumed.

Mr. Biggar, however, confined himself to the Transcontinental section of the original scheme; and his letter contained no reply to our request for a more general statement as to the whole project, its motives and objects, and the manner in which the company might have suffered hindrance in carrying out its program. We accordingly addressed a further communication to Mr. Chamberlin.

In a letter to us dated January 30, 1917, he wrote as follows:

LETTER FROM THE PRESIDENT OF THE GRAND TRUNK.

In reply to the first question asked in your letter "as to the effect on the Grand Trunk proper of the loss of the \$25,000,000 investment," it is perhaps necessary to repeat to some extent what has already been said from time to time on the subject.

The advance to the Branch Line Co.—every dollar of it—represents money paid by the Grand Trunk in order to complete the lines, the bond issues having been found insufficient for the purpose, together with interest accruing. These branch lines were intended to be, and have been, important feeders to the parent company, the present financial position of which would have been much worse than it is had they not been constructed.

The Grand Trunk Railway Co. having furnished the money necessary to complete these lines would naturally look upon the confiscation of its investment as a crime. The money was put into it in good faith, in the belief that the Grand Trunk Pacific was largely a national undertaking. That the railway has turned out so far not to be a success is no fault of theirs, but can be attributed directly to the action of the Government in subsidizing competing lines and in many ways enormously adding to the cost of construction. There is not a shadow of doubt that had the course subsequently followed by the Government been known when application for the Grand Trunk Pacific charter was made, that road would never have been built.

These are the facts as understood by the Grand Trunk directors and shareholders.

The repudiation of this legitimate indebtedness in any arrangement made with the Government would not only injure the Grand Trunk Co.'s credit, but might induce a spirit of hostile criticism on the part of investors in Grand Trunk securities in London and New York that might easily react upon the credit of the country.

The foregoing remarks apply also to the advances to the Saskatchewan Railway.

The Grand Trunk Pacific Development Co. was organized with a view to obtaining for the Grand Trunk Pacific Railway terminals and town sites, in order to induce settlers to take up land on the line of the railway. The whole of the common stock was owned by the Grand Trunk Pacific Railway Co. The enterprise was an endeavor to do at our own expense exactly what in the case of the Canadian Pacific and Canadian Northern Cos. had been provided by the Government by giving land subsidies. The money advanced by the Grand Trunk Railway Co. would have been repaid had it not been for the collapse of land values in the West, owing to the culmination of the boom in real estate. The assets of the company are owned by the Grand Trunk Pacific Railway Co., and the operations of the Development Co. accrue entirely to its benefit.

To the second question asked as to the effect on the Grand Trunk proper should the operation of the Grand Trunk Pacific be left as it is and the former not be relieved from its guarantees, there can be only one answer; it would mean a receivership for the Grand Trunk Co., carrying with it the destruction of its credit for some time to come and the impairment of the credit of the whole Dominion.

I can hardly add anything to lend additional force to the remarks already made in order to indicate the justice of our claim. If we have been guilty of too much optimism in the inception of the scheme, does not the same criticism apply to the Government which subsidized a railway system to compete with us, its success being dependent entirely upon a large influx of settlers in the West? While this expectation has not yet been fulfilled, it is not unreasonable to hope that it has only been deferred, and that eventually the Grand Trunk Pacific Railway system will prove an excellent national asset.

Mr. Chamberlin's letter in effect charges bad faith, unless the demands made by his company are acceded to by the country. "Confiscation," "crime," "repudiation of legitimate indebtedness," are grave words to be used by the president of a great company in an official communication referring to the action of the Government. The matter could not rest there. A serious situation was created, and one which in our view could not rest on mere affirmation or unsupported opinion.

If the company has been taken advantage of, or in any way deluded or defrauded by the Government, the fair name of Canada requires immediate redress. On the other hand, the country ought not to be called upon to accept, on the ground of good faith, a large loss and responsibility, unless this ground is well established. We accordingly arranged to hold a viva voce examination.

#### HEARING OF GRAND TRUNK OFFICIALS AT MONTREAL.

On this occasion, Mr. Chamberlin was given every opportunity to disclose all the grounds on which, as a matter of fairness, the Grand Trunk ought to be relieved of its obligations. No such case has been made out. Still less a case of "repudiation of legitimate obligations."

We have reprinted in full in Appendix B to this report, Mr. Chamberlin's evidence. In reference to the National Transcontinental, two new points were raised: (1) That the statutory obligation to route ocean traffic from and to the West via Canadian ports rather than via Portland is injurious to the Grand Trunk, and (2) that the delay in the completion of the western portion of the Transcontinental and the absence of a connection via North Bay caused the Grand Trunk to lose valuable traffic which they might have had in the years of heavy business before 1914. The answer as to (1) is

that the company accepted the obligation when it took its act, and that they have never so far asked to be relieved of it. In respect of (2) there is no ground for holding that the Government undertook any obligation to the company which it failed to carry out. There was indeed a provision in the National Transcontinental act of 1904 that the Government should so construct the railway that the section between Winnipeg and Quebec and that between Quebec and Moncton should be completed as nearly as practicable at the same time. But this was a statutory public obligation and confers no contractual right on the Grand Trunk Pacific Co. It may well be that in this and in other respects the Grand Trunk failed to procure the insertion in its agreement with the Government of stipulations which prudence would have recommended.

#### GRAND TRUNK PACIFIC CASE.

In respect to the Grand Trunk Pacific proper, Mr. Chamberlin rested his case on the following main grounds: (1) That the Government had, in effect, gone into partnership with the Grand Trunk Pacific and that subsequently it had by subsidies and guaranties enabled a rival (the Canadian Northern) to come into existence; and that this action of the Government was, in view of its position as partner with the Grand Trunk Pacific, tantamount to bad faith; (2) That the simultaneous construction of the Canadian Northern in the same territory greatly enhanced the difficulty of obtaining labor, doubled its price, and also prolonged the period of construction; (3) That a new duty on steel rails was imposed after the Grand Trunk Pacific act was passed, and that this added \$5,000,000 to the cost of construction. Mr. Chamberlin reiterated his strong belief that his predecessors would never have gone into the scheme had they known that they would be exposed to Canadian Northern competition.

As to (1) we can not for a moment accept Mr. Chamberlin's contention. The Government was and is a government, not a mere private partner; and it retained and retains all the attributes of a government, including the power to charter new railways. We can not suppose that the management of the Grand Trunk were ignorant of this fact when they took the act constituting the Grand Trunk Pacific Co. Seeing, moreover, that the Canadian Pacific Railway Co. had obtained special statutory protection against certain competition, we can hardly believe that their attention was not directed to the matter. Whether they applied for a similar protection and failed to obtain it, or whether they determined that it was useless to apply, we know not. But the point is not important. It is clear that the Government was entirely entitled to do what it did. (2) This no doubt was a fact, which was disadvantageous to the Grand Trunk Pacific; but the company took this risk, as it took other business risks, when it promoted its enterprise. (3) In this case also it is clear from the correspondence between the company and the then prime minister, exchanged in the autumn of 1905, that the Government in no way broke faith with the company. The bill for the act imposing the duty was introduced three months before the agreement between the Government and the company was signed. The company must therefore have been aware of the Government's intention, and it must be held to have taken its agreement, containing no provision

for exemption, with full knowledge of this intention. According to the correspondence, the prime minister believed in 1905 that the question of a duty on rails had been more than once discussed at the time of the inception of the scheme; Mr. Hays, for the Grand Trunk Pacific, believed it had never been discussed at all.

#### THE COMMISSION'S CONCLUSIONS.

Our inquiry has fully satisfied us that the Grand Trunk management was content at the time with the arrangement made; that it deliberately took its business chances, and proceeded with the undertaking. On the evidence there is nothing whatever to justify any charge of lack of fairness or good faith on the part of the Government in its dealings with the company. We have no hesitation in saying that, neither legally nor morally, have the promoters or shareholders of the Grand Trunk Pacific Co. any basis for a claim that the country shall make good the Grand Trunk's mistaken investment in the Grand Trunk Pacific. Any aid given to them must be looked upon not as a matter of obligation but as spontaneous bounty.

The question is really so left by the Grand Trunk officials themselves. The record reads (page 176) as follows:

Sir HENRY DRAYTON. Doesn't it really come down to this, that the statements in your letter mean that in your view, in order to protect the finances of the Grand Trunk, and as a corollary to protect the finances of the country, the Government ought to relieve the Grand Trunk in regard to its investment; isn't that the whole thing?

Mr. CHAMBERLIN. That is the whole thing.

Sir HENRY DRAYTON. There is nothing else to it?

Mr. CHAMBERLIN. Nothing else.

#### THE PARENT GRAND TRUNK CO.

We turn to the position of the parent Grand Trunk Co. The proposal of its chairman is that, after they have been permitted to wash their hands of their Grand Trunk Pacific venture, they shall revert to their old position of a local road in Eastern Canada. We can not think that this is in the interest of the country. We can not accept the chairman's view that on these terms the company would be "able to fulfill the ever-increasing demands of the public bodies." We do not think that "the credit of the Grand Trunk Co.," weakened as it must be by its Grand Trunk Pacific failure, could be "so maintained as to render possible the raising of fresh capital as required." The financial management of the company is not such as to inspire confidence. A few weeks after the chairman's letter acknowledging that the company could not meet their Grand Trunk Pacific liabilities—with short term notes, issued to make advances to Grand Trunk Pacific companies, which those companies evidently can not meet at maturity, outstanding to the amount of \$25,000,000—the Grand Trunk Co. paid away \$2,500,000 in dividends. And the accounts for the same year, 1915, contain under the head of "Capital expenditure" this entry:

Discount and commission:

	£	s.	d.
On sale of 3-year 5 per cent notes.....	22,438	5	3
On sale of 5-year 5½ per cent notes.....	104,371	11	7

126,809 16 10

(Say \$608,604.)

## GRAND TRUNK MAINTENANCE EXPENDITURE.

Further, the Grand Trunk Railway has not been, and is not being, adequately maintained. No depreciation fund has been created for equipment. Mr. Chamberlain's view, as shown by his evidence, is that 5 per cent on the cost of the equipment ought to be annually charged under this head. He says:

Take engines and cars, they are either worn out or out of date in 20 years.

This item, according to his evidence, would have required an annual sum of \$2,750,000. He also states:

If we had \$25,000,000 now, it would put us in fine shape.

The vice president, in charge of operations, Mr. Kelley, has direct responsibility for the plant. On Mr. Chamberlain's evidence being put to him, he agreed with it. He has since submitted to us a full report on the question of deferred expenditure. "Deferred expenditure" means, in plain English, expenditure which has not been made, but which, in the view of those charged with the duty of maintaining the plant, ought to have been made.

We give below Mr. Kelley's summary in tabular form, but we do not think it necessary to reproduce all the supporting tables:

*Grand Trunk Railway System—Summary of deferred expenditures.*

Rebuilding and reinforcing freight car equipment.....	\$8,943,971.14
Equipping freight and passenger cars with safety appliances:	
Original estimate.....	\$850,722.50
Already expended.....	392,220.89
Balance to be expended.....	458,501.61
Equipping engines with safety appliances:	
Original estimate.....	17,828.00
Already expended.....	553.68
Balance to be expended.....	17,274.32
Deferred renewals in maintenance of way department:	
In Canada.....	6,182,672.00
In United States.....	5,578,926.00
Total.....	11,761,598.00
Total.....	21,181,345.07

MONTREAL, March 5, 1917.

On the single item of "rails," the "cash expenditure required to restore normal conditions" is reported as \$5,312,142. The cost of restoring ballast to normal conditions is reported as \$2,434,000.

With reference to the deferred renewals in Canada, amounting to over \$6,000,000, it appears that they have accumulated during 11 years, 1906-1916. During this period, in spite of the requirements of the property and the claims of public safety, \$36,000,000 were paid out in dividends.

## GRAND TRUNK CAPITAL EXPENDITURE REQUIRED.

The \$21,000,000 dealt with above represent the money which the responsible officers of the company estimate to be required to put the existing plant into good normal condition. This is a revenue liability. But the existing plant is quite inadequate for existing

traffic and requires large additions, for which new capital must be raised. The estimates of necessary capital expenditure submitted to us are as follows:

Requirements for rolling stock, shops, and machinery.....	\$26, 150, 000
Requirements for automatic block signals (main line in Canada only)....	3, 533, 000
Requirements for installing rock-ballast crushing plant.....	467, 500
Total.....	30, 150, 500

Putting together revenue and capital expenditure, we find that the Grand Trunk Railway, in the opinion of its own officers, requires over \$51,000,000 spent upon it to put it in a position to meet the requirements of its to-day's business. We see no reason to expect that under existing conditions this necessary money will be provided.

#### EFFECT ON CANADIAN BUSINESS.

The effect on the country's business of deficient railway facilities is very serious. It is best shown in a period of stress, whether this stress is due to traffic congestion or is the result of bad weather conditions. February last gives a good example. The traffic was very heavy; embargoes were the rule and not the exception; weather conditions were worse than usual, even in winter. The Grand Trunk had handled over the lines in its Ontario district in February, 1916, 318,532 cars. Last February it handled only 195,120. In its eastern district in February, 1916, the company handled 210,914 cars, and in February of this year only 109,567 cars. This failure has occurred at a period when the demands on the country for food supplies, munitions of war, and other articles used by the allied armies are extremely heavy. The situation is one which calls loudly and insistently for an immediate remedy.

In fairness to the Grand Trunk, it should be pointed out that congestion inevitably causes a falling off in the volume of traffic handled. Cars which are insistently required for the necessities of life, such as coal, perishable foods, live stock—and under present circumstances munitions—have at all hazards to be got forward. This necessitates greatly increased yard work and switching. Preferential treatment of any one class of traffic always retards the general movement, and so adds further to congestion.

The Canadian Pacific is a well-organized line. Its movements also fell off in eastern Canada. Its two districts probably most nearly comparable to the Grand Trunk's eastern and Ontario lines are its Ontario and Quebec districts. In February, 1916, the Canadian Pacific handled in its Ontario district 92,255 cars, and in 1917 only 80,414 cars. In its Quebec district it handled in February, 1916, 130,045 cars, and in February, 1917, only 96,464 cars. The resultant percentage decreases are for the Grand Trunk in its Ontario division, 39.37 per cent, and for the Canadian Pacific Railway in its Ontario district, 15.58 per cent. For the Grand Trunk in its eastern division, and for the Canadian Pacific in its Quebec district, the percentage decreases are 48.5 per cent and 25.82 per cent, respectively.

At a later page of this report we refer in another connection to the fact that the Intercolonial has no terminals of its own at Montreal, but uses those of the Grand Trunk. The congestion of February was more a terminal congestion than a rail congestion, and the Inter-

colonial business out of Montreal was directly affected by the congestion of the Grand Trunk terminals. The intercolonial movement in the first division out of Montreal in February, 1916, amounted to 25,446 cars, and for the same month in 1917, to 15,628 cars, a percentage decrease of 38.58 per cent. The Intercolonial system, however, as a whole, had a movement in February, 1917, of 51,311 cars, as compared with 66,510 cars in February, 1916, a percentage decrease of only 22.85 per cent; while the Grand Trunk, for its entire system, handled in February, 1916, 652,358 cars, and in the same period in 1917, 402,133 cars, a percentage decrease of 38.35 per cent.

#### COMMISSIONERS' RECOMMENDATION.

The Grand Trunk Co.'s board of directors is 3,000 miles away. We can not think that the state of affairs which our investigation has disclosed could have arisen had the board been on the spot. We are forced to the conclusion that the control of an important Canadian company should be in Canada. But this can not be secured as long as the Grand Trunk Railway is owned by shareholders in England. We have come to the conclusion, therefore, that the control, not only of the Grand Trunk Pacific Co., but also of the Grand Trunk Co. of Canada, should be surrendered into the hands of the people of Canada. We recommend that the chairman of the Grand Trunk Co. be informed that it is only on this condition that the Government is prepared to relieve his company of the obligations which it has incurred in respect to the Grand Trunk Pacific. We recur later on in this report to these two companies in order to set out our recommendations as to their ownership and management in the future and as to the terms to be offered to the Grand Trunk shareholders.

#### PART III. THE CANADIAN NORTHERN SYSTEM.

The system now known as the Canadian Northern began with the acquisition by Messrs. Mackenzie and Mann, in the year 1896, of a charter which had been granted in 1889 by the Province of Manitoba to the Lake Manitoba Railway & Canal Co. The charter was for a line 123 miles in length from Gladstone on the Canadian Pacific to Winnipegosis. Construction was promptly begun and the line was opened in January, 1897. In the same year (1897) Messrs. Mackenzie and Mann began to construct a line from Winnipeg to Port Arthur, known as the Manitoba & Southeastern. Shortly after they constructed also the Winnipeg & Great Northern.

These three companies among them received land grants of 4,000,000 acres, and their bonds were largely guaranteed by the Province of Manitoba.

In 1899 the Lake Manitoba Railway & Canal Co. and the Winnipeg & Great Northern Co. were amalgamated as the Canadian Northern Railway Co.

Thereafter, by leases, by absorptions, and by new construction, the Canadian Northern system grew fast in both directions, eastward and westward. As a system it never has had, nor has it to-day, any corporate existence. It was held together by stock ownership. The whole of the common stock of the Canadian Northern Railway Co. itself was held by Messrs. Mackenzie and Mann. In the case of the

affiliated companies the stock was held sometimes by the parent company, sometimes by Messrs. Mackenzie and Mann in their own names.

Throughout the history of the Canadian Northern construction the company has depended on public aid, direct or indirect. The development in the 20 years since 1896 has gone through four distinct stages, though chronologically the stages overlap to a considerable extent. In the first stage the company relied on provincial guarantees. As it grew larger and more ambitious it invoked and obtained aid from the Dominion. This was the second stage. In the third stage the company, having become better known, raised large amounts by the issue of perpetual debenture stock, and later of convertible income debenture stock, on its own credit. At no period, as far as we have been able to ascertain, has any actual cash been obtained from the sale of the common stock, either of the parent company or of the constituent or subsidiary companies. With the exception of a French issue of \$4,000,000 in December, 1911, practically all the Canadian Northern money obtained by public subscription has been raised in London.

#### CANADIAN NORTHERN POSITION IN 1914.

In the fourth and last stage, in 1914, with heavy interest payments to be made and large construction contracts still open, the company found its own resources insufficient. It reported that it required \$100,000,000 to complete and equip its system; that it could raise on its own account \$58,000,000; and it appealed to the Government to find the balance.

The Government thereupon guaranteed an issue of \$45,000,000 of 4 per cent first mortgage debenture stock. Of this issue \$14,600,000 was sold in London at 91½ in July, 1914, and \$2,433,333 at 91 in February, 1915. There have been handed back to the Dominion Government \$12,500,000 as security for a cash loan of \$10,000,000. The remainder (except \$133,333 unissued) has been pledged as security for loans in New York. The total proceeds in cash from those sales and pledges were \$26,759,265. This sum having proved insufficient, in May, 1916, the Canadian Northern obtained from the Government a further loan of \$15,000,000 at the rate of 6 per cent, repayable on demand, to be used for construction or to meet interest obligations. In addition, the Government undertook, in September, 1915, to lend to the company the money necessary to pay interest either to the Government itself or to the public on the \$45,000,000 debentures. And to date \$1,756,000 have been advanced for this purpose.

It will be observed that the first appeal to the Government was some months before the war. No doubt the stringency of the money markets of the world at the time made it more difficult than it otherwise would have been for the company to sell its securities. But that was not all. There was a further cause intrinsic to the company itself. It had gone ahead too fast and had undertaken various expensive schemes which could not possibly carry themselves from the outset. The Canadian Northern Pacific, the Canadian Northern Ontario, and the Montreal Terminal especially implied very serious commitments. And the Prairie system, which was self-supporting

and yielded a profit, was not sufficiently developed to carry this weight.

The war, which at the outset paralyzed the business of the country and which has practically closed the markets of the world to the issue of permanent securities other than Government loans for an indefinite time to come, further aggravated the situation. The company, when it applied to the Government early in 1914, reckoned on selling its \$45,000,000 guaranteed debentures for \$42,000,000. In fact, it has only obtained from them \$36,759,265 in cash. It reckoned that other securities which it had to sell would bring in \$58,000,000, but many of them it has not been able to sell. At present the company is living from hand to mouth and is nominally borrowing from the Government to pay interest on the Government's own loans.

#### CANADIAN NORTHERN ANNUAL REPORT FOR 1916.

The report to shareholders for the year ending June 30, 1916, appears to show that after paying working expenses and fixed charges the company has a deficit of only \$248,127. But this report does not disclose the fact that more than \$5,400,000 were paid for interest and charged to capital as part of the construction cost of a system which was all but completed.

According to an estimate submitted to us by the company the fixed charges for the year ending June 30, 1917, will be \$16,539,638. Of this the Dominion and British Columbia Governments have undertaken to pay \$4,514,507 under certain agreements. This leaves the company to find out of net revenue about \$2,500,000 more than it had available this year. An income of \$2,500,000 net implies an increase of at least \$9,000,000 gross. The company itself does not venture to expect a greater increase of gross than \$7,000,000.

The above agreements to pay interest are only for two and three years, respectively. In the year ending June 30, 1920, the Government contributions will have fallen to \$627,000, and the following year they will have ceased entirely. The company's estimate for the year ending June 30, 1921, is that they will then have fixed charges amounting to \$18,300,000.<sup>1</sup> And this burden they will have to bear unaided. To carry it they would need (assuming working expenses at the very moderate ratio of 70 per cent) a gross revenue of \$61,000,000. We can not think it safe to assume that any such result will actually be attained.

#### CANADIAN NORTHERN ESTIMATE IN 1914.

Without desiring to cast any reflection on the Canadian Northern Co., we think that those responsible for its management have taken, and still continue to take, an unjustifiably sanguine view of its possibilities. In 1914, when the company was applying to the Dominion Parliament for the guarantee of \$45,000,000 debentures to complete the undertaking it submitted an estimate for the three years 1916 to 1918 to Mr. Hanna, vice president of the company, on what was described as "the very conservative basis of the percentage increase

<sup>1</sup> This includes the interest, amounting to \$2,500,000, on the new capital estimated by the company as necessary to be spent in the five years. This estimate we regard as quite inadequate. If so, the fixed charges will be correspondingly increased.

for the past five years." The company added that "inasmuch as a part of the mileage has been disconnected and confined to a local short-haul business, operation as a united trunk-line system should result in a much greater per mile average."

We reproduce this estimate below:

	For the year ending June 30—		
	1916	1917	1918
Gross earnings.....	\$54,000,000	\$61,000,000	\$67,000,000
Operating expenses.....	38,890,000	43,300,000	46,900,000
Net earnings.....	15,120,000	17,700,000	20,100,000
Fixed charges, including interest on securities at present applied for.....	12,607,115	14,019,615	14,907,115
Surplus.....	2,512,885	3,680,385	5,292,885
Less interest on 5 per cent income debenture stock.....	1,250,000	1,250,000	1,250,000
	1,262,885	2,430,385	4,042,885

This estimate showed a margin, after paying \$1,250,000 per annum on the 5 per cent income debenture stock, of \$1,262,000 in 1916.

The estimate was—

Gross earnings.....	\$54,000,000
Net earnings.....	15,120,000

The facts have been—

Gross earnings.....	\$35,476,000
Net earnings.....	9,373,000

And there has been a bumper harvest, and it is acknowledged that the war has increased rather than diminished traffic. A further fact has been that for the year ending June 30, 1916, after passing the interest of \$1,250,000 upon the \$25,000,000 income debenture stock, and after charging against capital interest to the amount of \$5,445,389 (less \$878,166 paid by the Government under its guaranty) in respect of "lines under construction," the company was still \$248,000 short of the money required to meet its bonded indebtedness.

We appreciate that circumstances which could not have been foreseen in the spring of 1914 have arisen to upset the estimates then made. The money was not immediately forthcoming. The full amount estimated as necessary was not obtained, and the terms were more onerous. Prices have gone up. Labor has been scarce and dear. The expected immigrants have not come. The company has sold its ocean steamers. The system, even to-day, is not in the condition that was in the minds of the company's officers when the estimates were made.

But making all possible allowances, we think that those responsible for the estimates of 1914, upon which Parliament acted, have incurred very serious responsibility.

## CANADIAN NORTHERN ESTIMATE IN 1917.

In January last the company submitted to us an estimate for the five years, 1917-21. This was as follows:

	Yearended June 30, 1917.	Yearended June 30, 1918.	Yearended June 30, 1919.	Yearended June 30, 1920.	Yearended June 30, 1921.
Gross earnings.....	\$42,590,000	\$48,185,000	\$55,410,000	\$62,300,000	\$68,480,000
Operating expenses.....	31,090,000	34,790,000	39,895,000	44,200,000	47,920,000
	11,500,000	13,395,000	15,515,000	18,100,000	20,540,000

The estimate submitted to Parliament by the company for the year to June 30, 1917, was:

Gross.....	\$61,000,000
Net.....	17,700,000

The revised estimate now submitted to us by the company is:

Gross.....	\$42,590,000
Net.....	11,500,000

The estimate submitted to Parliament by the company for the year to June 30, 1918, was:

Gross.....	\$67,000,000
Net.....	20,100,000

The revised estimate now submitted to us by the company is:

Gross.....	\$48,185,000
Net.....	13,395,000

We think the new estimate made for us, even though more conservative than the old, is still too sanguine. We see no reason to think that the traffic will increase at any such rate as that indicated. To assume a growth each year of about 11 per cent over the previous year, and simultaneously an operating ratio falling steadily from 73 per cent to 70 per cent is only once more to invite disillusionment.

## COMPARISON WITH CANADIAN PACIFIC.

We think the following statement of the facts of the last 11 years of Canadian Pacific history is instructive. The table shows for each year gross and net earnings per mile, and also the percentage of operating ratio.

	Gross earnings. <sup>1</sup>	Net earnings.	Operat- ing ratio.
1906.....	\$7,026	\$2,617	62.7
1907.....	7,890	2,765	64.9
1908.....	7,573	2,312	60.4
1909.....	7,726	2,324	69.9
1910.....	9,425	3,358	64.4
1911.....	10,072	3,548	64.8
1912.....	11,453	3,614	64.9
1913.....	12,263	4,068	66.8
1914.....	10,977	3,587	67.3
1915.....	7,998	2,714	66.0
1916.....	10,024	3,810	67.0

<sup>1</sup> Gross earnings include receipts from steamships, telegraphs, and other sources not properly attributable to railway mileage.

It will be seen that the gross earnings of the Canadian Pacific Railway by no means show a steady growth. There can be no doubt that the drop of the last three years reflects, in part at least, the effect of the new competition of the Canadian Northern and the Grand Trunk Pacific. And the Canadian Northern growth must equally be conditioned by the competition of the Canadian Pacific and the Grand Trunk. It will be seen further from the table that there is by no means a steady growth of net earnings. Nor can we, in face of the constant increase of the operating ratio through a long series of years all over the American continent, in view of the great rise in the cost of materials, especially coal and steel rails, and the insistent demands for increases of wages, think it safe to assume that the operating ratio of the Canadian Northern will show a consistently steady decline in each succeeding year.

#### PROSPECTIVE REQUIREMENTS OF CANADIAN NORTHERN.

The Canadian Northern estimate submitted to us further calculated that, in the course of the next five years, the company will need to spend \$12,500,000 of new capital for additions and betterments, and \$25,000,000 for new equipment. We consider these estimates entirely inadequate, and especially so in relation to the estimate of 90 per cent increase in gross receipts. The company has acknowledged that its equipment is inadequate to take care of its existing business. That equipment stands in the company's books at \$59,000,000. If the business were to increase 90 per cent, it would seem to need not \$25,000,000, but over \$50,000,000 spent on new equipment to handle it. Again we refer to Canadian Pacific Railway figures. That company has seven freight cars per mile of line. The Canadian Northern has three. We think it will need five; and this implies an addition of 20,000 cars to the existing stock. This alone would imply, even if prices dropped to those current a year ago, an additional expenditure of something like \$30,000,000. And the same thing is true in respect of locomotives. Nor can the estimate of \$12,500,000 for additions and betterments, spread over a system of 10,000 miles during five years, be sustained, more especially in the case of a system that is only just emerging from the construction stage. It works out at \$250 per mile per annum. It is impossible that the needs of a rapidly growing property can be adequately provided for at any such figure.

We think that \$40,000,000 for equipment and perhaps \$30,000,000 for additions and betterments would be a moderate estimate of the system's needs in the next five years, assuming that the Canadian Northern remains separate and independent.

We sum up the Canadian Northern situation as follows: The company is not at present able, and will not for some years to come be able, to meet its fixed charges. It will, we doubt not, increase its net earnings as the years go by. But the increased net earnings will be fully absorbed for some years to come by the interest on new capital, which must be put in if the system is to render efficient service. The company has not now, and as far as we can see will not have in the near future, such credit as to enable it to raise the necessary capital. As we have already shown, the public investment, direct and indirect, in the Canadian Northern system amounts to \$298,000,000. We do not recommend further public investment in the system as at present constituted.

## VALUE OF CANADIAN NORTHERN UNDERTAKING.

1. *Cash investment.*—The property investment of the Canadian Northern Railway system is stated in the balance sheet of June 30, 1916, at \$494,112,489.34. This figure admittedly has been written up to include \$100,000,000 of capital stock. And this stock, as we have already said, was issued without any cash consideration. We have endeavored to ascertain the actual cost of the system. From the company's official reports and special statements supplied to us we have ascertained that the maximum cash investment that can have been made in the property is \$383,302,451.33.

The following tables, which have been accepted by the company as accurate, show:

- (i) The source of money or credit.
- (ii) The disposition of money or debit items.
- (iii) A list of bonds of constituent companies assumed.

(i) *Source of money or credit.*

Cash realized from securities sold and from collateral loans (pp. 205-207, record).....	\$302, 713, 872. 69
Dominion Government loans of 1914 and 1916.....	15, 878, 166. 67
Subsidies, not including subsidies of prior organizations (q. 4).....	28, 000, 222. 50
Land sales (q. 4).....	16, 603, 295. 62
Sales of acquired bonds and stock (q. 8).....	618, 606. 45
From equipment trust securities (q. 4).....	\$37, 233, 871. 13
Par value equipment trusts issued..	\$39, 836, 458. 20
Now outstanding.....	16, 862, 500. 00

Paid from proceeds of other securities (p. 94). 22, 973, 958. 20

Net amount from equipment trusts.....	14, 259, 912. 93
Due on construction.....	16, 666, 957. 26
Audited vouchers and accounts.....	11, 161, 443. 88
Wages and salaries.....	1, 832, 708. 23
Matured interest coupons unpaid.....	2, 166, 597. 75
Accrued interest not yet payable.....	2, 412, 673. 30
Accrued taxes.....	250, 000. 00
Insurance fund account.....	616, 847. 53
Railway surplus.....	2, 776, 711. 03
Bonds assumed in the acquisition of constituent companies.....	20, 215, 746. 03
	436, 173, 761. 87

(ii) *Disposition of money or debit items.*

Cash in hand and at bank.....	\$25, 414, 408. 50
Materials and supplies.....	3, 368, 924. 82
Due from companies and individuals.....	7, 276, 429. 01
Due from agents.....	1, 446, 010. 67
Deferred land payments.....	7, 140, 996. 59
Insurance paid in advance.....	682, 906. 11
Unadjusted debit items.....	246, 545. 00
Securities (dock, lands, and stock-yard companies).....	1, 123, 393. 55
Sinking funds.....	248, 750. 66
Terminal properties and miscellaneous investments.....	5, 922, 945. 63

52, 871, 310. 54

Total available for road and equipment..... \$363, 086, 705. 30

Bonds assumed in part payment of lines purchased

(see list in Table 3, following)..... 20, 215, 746. 03

383, 302, 451. 33

436, 173, 761. 87

(iii) *Bonds shown as outstanding, but for which no proceeds are reported as received—payment assumed by Canadian Northern Railway as part of purchase.*

Qu' A. L. L. & S. Ry. & S. B. Co., 4 per cent first-mortgage debenture stock.....	\$5,051,462.90	
Less in treasury.....	31,781.80	
		\$5,019,681.10
Central Ontario Railway, 5 per cent first-mortgage bonds.....		956,300.00
Bay of Quinte Railway, 5 per cent first-mortgage bonds.....		830,000.00
Great Northern Railway of Canada, 4 per cent first-mortgage bonds.....		3,505,750.00
Quebec & Lake St. John Railway, 4 per cent mortgage debenture stock.....		4,359,014.93
*Duluth, Rainy Lake & Western Railway, 5 per cent first-mortgage bonds.....		2,000,000.00
Halifax & Southwestern, 3½ per cent first-mortgage bonds.....		4,447,000.00
*Minnesota & Manitoba Railway, 4 per cent first-mortgage bonds..		349,000.00
Niagara St. C. & T. Railway, 5 per cent first-mortgage bonds.....		1,098,000.00
		22,564,746.03
*Less bonds on leased lines not included in funded debt:		
Duluth, Rainy Lake & Winnipeg Railway.....	\$2,000,000.00	
Minnesota & Manitoba Railway.....	349,000.00	
		2,349,000.00
		20,215,746.03

From this total maximum of \$383,302,451 we deduct the following items, which the company has included in cost of road and equipment, but which do not represent investment in property:

1. Advances to controlled companies to pay indebtedness for interest subsequent to construction and operating deficits which were capitalized when the system was put together, not less than.....	\$10,000,000
2. Interest during 1916 overcharged to construction, not less than.....	3,000,000
	13,000,000

Leaving for investment in road and equipment and in securities of constituent and subsidiary companies..... 370,302,451

We find, then, \$370,000,000 to be the maximum possible cost of the Canadian Northern system as at present existing. In other words, as indeed is frankly admitted by Canadian Northern witnesses, the Canadian Northern shares represent no cash investment.

2. *Physical basis.*—But money cost is not all. We decided also to ascertain the approximate value, on the basis of reproduction cost, of the property as it exists to-day. And we rely on Prof. Swain's valuation for this purpose. This valuation is, in his opinion, a liberal estimate of the fair cost of reproducing new, at prewar prices of labor and material, the system at present existing. It includes property belonging to the system at its estimated cost, if it had to be acquired or constructed to-day. And therefore it not only gives the company credit for lands which it in fact owns, even though it obtained them as a grant; but it also credits the company with the increment of land values since the date of the original acquisition. And these two items are quite large.

Prof. Swain's method of arriving at his results are fully explained in his report, which is printed as an appendix hereto. He makes the total cost of reproduction new, \$397,441,567. From this he deducts for depreciation \$40,031,889, making the cost of reproduction of the property in its present condition \$357,409,678. This, however, does not include equipment. The equipment was inspected by Mr. Buchanan and, on the basis of his report as to quantities and condi-

tion, a valuation has been made by Mr. W. H. Chadbourn, C. E., chief engineer of our valuation staff. He finds the cost of reproduction new at prewar prices to be \$56,590,418, and the depreciation to be \$11,250,433, making the present value \$45,339,985. Putting the two valuations together, we have \$402,749,653 as the fair cost of reproducing the entire physical Canadian Northern system in its present condition. Now the outstanding liabilities (bonds, debentures, notes, and bank and other loans) of the company exceed \$400,000,000.

Reckoning on this basis, it appears that the liabilities are practically equal to the reproduction cost of the physical property. But the physical property does not all belong to the Canadian Northern shareholders. There are minority holdings in several of the subsidiary undertakings. And the Canadian Northern interest in these undertakings only corresponds to its percentage proportion of their respective share capitals. This implies a reduction of more than \$10,000,000 in the estimate of the assets belonging to the Canadian Northern shareholders.

We find then that, on the physical basis, the value of the property of the Canadian Northern shareholders is distinctly less than the amount of the liabilities against it. On this basis the equity of the shareholders must be regarded as nonexistent.

3. *Going concern.*—A third basis of estimate is the value of the property for sale as a going concern. A purchaser would not consider either original cost or reproduction cost as of much importance. The price he would pay would be based on earning power, present and potential. On this basis he would consider how far the Canadian Northern is at present short of covering its fixed charges, how long it will take to reach equilibrium, how much new capital will have to be spent, how soon a dividend may be expected and at what rate. Calculating on this basis, in the light of the figures set out above it is evident that no purchaser would offer for the property a sum amounting to the total of its liabilities.

#### CONCLUSION AS TO CANADIAN NORTHERN.

We conclude, therefore, that the shareholders of the company have no equity either on the ground of cash put in, or on the ground of physical reproduction cost, or on the ground of the salable value of their property as a going concern. If, then, the people of Canada have already found, or assumed responsibility for, the bulk of the capital; if they must needs find what further capital is required; and if they must make up for some years to come considerable deficits in net earnings, it seems logically to follow that the people of Canada should assume control of the property. We return later to the Canadian Northern Co. in order to set out our recommendations as to its ownership and management in the future and as to the terms to be offered to the existing shareholder.

#### PART IV. POSSIBLE METHODS OF PUBLIC CONTROL.

We recommend that the control of the three companies, Grand Trunk, Grand Trunk Pacific, and the Canadian Northern be assumed by the people of Canada. We have therefore now to consider how this control should be exercised.

## GOVERNMENT OPERATION DISCUSSED AND REJECTED.

We are instructed to consider the acquisition of the Canadian railways by the State, and the possibility of their operation in connection with the Intercolonial. We do not recommend this course. In our judgment it is not in the interests of Canada that the operation of its railways should be in the hands of the Government. We know no country in the world, where a democratic State owns and operates its railways, in which politics have not injuriously affected the management of the railways and the railways have not had an injurious influence on politics. We do not think Government ownership of the Canadian railways would tend to reduction of rates, but rather in the contrary direction. For the carriage of one ton of freight one mile the Canadian shipper pays at present on the average three-fourths of 1 cent. On the railways of New South Wales, the oldest and most important Australian State, where the railways have been in Government hands from the outset, the shipper pays well over 2 cents. But we see no cause to enlarge here on such general considerations. There are several reasons peculiar to Canadian conditions why State ownership and operation should be avoided.

## THE CANADIAN PACIFIC POSITION.

We think that if the State took over and undertook to operate the Grand Trunk, the Grand Trunk Pacific, and the Canadian Northern, it would be morally bound to offer to purchase the Canadian Pacific also. This company is in a strong financial position; it has assets of great present and even greater potential value, largely exceeding its liabilities; its \$260,000,000 of common stock stand at a high premium, and have been very much higher; it pays a steady dividend of 10 per cent; its purchase would be a costly matter; and it does not ask to be purchased or to be helped in any other way. The company is admittedly progressive and gives a good public service. Moreover, it has a large investment in ocean steamships, irrigation, land and coal development schemes, and other enterprises quite unsuited for Government management. But the Canadian Pacific Railway is exposed throughout its whole territory to the competition of either one or both of the other systems. So long as that competition is in the hands of other organizations, also having to earn the interest on their bonds and striving to earn a dividend on their stocks, the Canadian Pacific Railway has no cause for complaint. But competition with railways operated by the Government stands on an entirely different footing. It would be at any time possible for the Government deliberately to adopt a policy of lowering rates, in some part or throughout the territory involved, below a commercial basis, and making up the deficiency out of general taxation. It might be argued that such a policy was justifiable on the ground that the general prosperity and development of the country would be thereby promoted. But while conceivably it might be proper to tax the public to develop the country, though in fact it would not be the whole public, but only certain portions of it that would benefit, it could not possibly be fair to impose a special tax upon the Canadian Pacific Railway shareholders for the purpose. And yet it is evident that this would in fact happen. The

Canadian Pacific Railway would be absolutely forced to follow any rate reduction made by the Government railways, on pain of losing the business entirely.

#### FURTHER REASONS AGAINST GOVERNMENT OPERATION.

Another strong argument against Government operation is to be found in the fact that the three great Canadian companies amongst them either own, lease, or control no less than 7,000 miles of railway situated in the United States. And some, at least, of these lines are necessary economic complements of the Canadian systems. It is clearly impossible that the Dominion Government should be subjected not only to the regulating authority of the Interstate Commerce Commission and the several State railway commissions of the United States, but also to the police regulations of all the States which these lines enter. Technically, no doubt, the difficulty could be got over by vesting the legal ownership in Government officials under their own names as trustees for the Government. But the practical fact would remain. It would in effect be the Canadian Government which would be ordered by the United States Interstate and State commissions to alter its rates, and Canadian Government officials who would be required by the United States law courts to explain their actions and justify their conduct. We can not think that such a situation would conduce to international harmony.

A yet more important consideration remains. Canada is at war and Canadian resources are deeply pledged for war purposes. If the Government takes over the railways, not only does it assume the direct responsibility for the whole existing debt, but all the new money that has to be raised (and as will be shown in a later portion of this report, the amount of this new money must necessarily be considerable within the next few years) will become a direct obligation of the Canadian Government. It is a matter of common knowledge that railway bonds and Government loans appeal to different classes. And we are persuaded that it is desirable that Canada should retain both strings to her bow.

For all these reasons our recommendation is that the idea of Government ownership and operation be not entertained.

#### RECEIVERSHIP DISCUSSED AND REJECTED.

Starting then from this position, we have to consider what alternative course is to be adopted. It is clear that neither the Canadian Northern nor the Grand Trunk can at the present moment meet its liabilities. In the United States when a company is in this position it is placed in the hands of a receiver. And at this moment upward of 40,000 miles of line are in that situation. Under a receivership the holders of the junior securities have to submit to compound their claim, and the fixed charges are reduced to an amount that the net revenue from operation suffices to meet. Ought this drastic course to be adopted here? We think not. We think the security holders of the companies have to some extent a moral claim on the Government. Their schemes of extension have been matters of public knowledge for many years. So far from discouraging them, the Governments, both of the Dominion and the Provinces, have by

subsidy and by guarantee, by loans and cash advances, encouraged them to go on.

But there is more than this. The bonds and debentures of the Grand Trunk Pacific and Canadian Northern have been placed in the main through London with non-Canadian holders. And these holders in subscribing have unquestionably been influenced by the fact that the companies were backed by the Canadian Government. Technically, of course, the Government has no responsibility beyond that of meeting its own guarantees. But if the two companies went into the hands of receivers, we can not doubt that investors outside Canada would believe, however erroneously, that the Dominion Government had treated them badly, and that the result would be serious injury to the credit of the Canadian Government, and indeed of all Canadian enterprises. And this result is one that, putting it on pecuniary grounds alone, the Canadian people should in their own interest spend a good deal of money to avoid. We therefore consider that Canada should assume the responsibility of seeing that the interest on these securities is met.

This responsibility is in our opinion unavoidable. But we recognize that it is serious. It will involve considerable financial aid for some years. How many we will not estimate, as it depends in the main on the rate at which Canada develops. And that rate no one can venture to foretell. We ought to point out, however, that the rate at which the Canadian Pacific progressed, when it was the only transcontinental line, can not reasonably be taken as a standard of the probable rate of progress of two new transcontinental systems, competing, not only with each other, but with the rich and firmly established Canadian Pacific itself.

#### TRANSFER TO A NEW BODY RECOMMENDED.

We have recommended, then, that the control of the three companies, Canadian Northern, Grand Trunk, and Grand Trunk Pacific, pass into other hands; that the rights of the creditors of all three companies be preserved intact; but that the railways of the three companies be not handed over to, or operated by, the Government. It is necessary, therefore, to find some new body or bodies to whom they can be transferred. We think the question whether there should be one body or more is answered by the facts that we have already cited. The Canadian Northern is weak in the east. The Grand Trunk, with the inadequate Prairie branches of the Grand Trunk Pacific, would be almost powerless to compete in the west with the Canadian Northern and the Canadian Pacific. The natural tendency of the Grand Trunk and Canadian Northern organizations, if left separate, would be for each to invade the territory of the other. Remaining separate, the Canadian Northern system would need to spend many millions of dollars to obtain an adequate hold on the east in competition with the Canadian Pacific and Grand Trunk. Remaining separate, the Grand Trunk and Grand Trunk Pacific system would need to spend many millions of dollars on new branches in the west, in order to hold its own with the Canadian Pacific and the Canadian Northern. And this money would be needed at once, for till it was spent neither organization would possess a complete system. Canada can not afford all these new railways,

and does not need three competitive systems. We recommend therefore that the three undertakings, the Canadian Northern, the Grand Trunk, and the Grand Trunk Pacific be united in one system. To whom then should its management be intrusted?

**SUGGESTED TRANSFER OF ALL THE RAILWAYS TO CANADIAN PACIFIC DISCUSSED.**

One possible solution which has been submitted to us we will deal with at the outset. For, though we are unable to recommend its adoption, it has very influential support. This suggestion takes two forms. The one is that the Canadian Pacific Co. should, by lease or purchase, obtain control of the other roads and operate the whole Canadian railway system as partner with the Government, on terms to be arranged. The other is that the Government should itself acquire all the roads, including the Canadian Pacific Railway, and employ the organization of that company as a basis on which to build up the organization of the greater system. The first alternative is especially supported from the financial side. And, indeed, were financial considerations controlling in this matter, we do not deny that a very strong case could be made for it. The second alternative commends itself more especially to those who feel that the Government is already involved so deeply in railway enterprise that it can not call a halt, and must go the whole length. We are not prepared to agree with either party. We do not think that a railway monopoly is desirable, either in the hands of a company, or in the hands of the State. We are convinced that the people of Canada who have spent or guaranteed—whether wisely or not, is not now the question—hundreds of millions of dollars, largely with the object of breaking a private monopoly, would never consent to the reestablishment of a still greater monopoly, even if the Government were a partner in the concern. We do not think that there is any necessity for the State to go further than it has already gone in the direction of Government operation. We recognize that the Government occupies in respect to the Canadian Northern and Grand Trunk Pacific roads, very much the position of a mortgagee whose mortgagor is in default. But we do not think that the Government, as a Government, need enter into possession. We think a scheme may be worked out whereby Canada will have two great systems, both with substantially similar management, operating alongside in healthy rivalry from ocean to ocean.

**SUGGESTED TRANSFER OF THE WHOLE OR A PORTION OF CANADIAN NORTHERN TO CANADIAN PACIFIC DISCUSSED.**

Another suggestion has been made which we will deal with here. In our judgment it has even less to recommend it. It is suggested that the lines of the Canadian Northern should be handed over to the Canadian Pacific Railway, on terms to be arranged. We can see no possible advantage to the country in this proposal. It would hand over the lines with the best prospect of development to the Canadian Pacific Railway. It would reestablish what would be a practical monopoly in the Prairie Provinces. It would leave the

country to carry the burden, for an indefinite time to come, of the Grand Trunk Pacific, which in its present isolated position has little hope of prosperous development. And it would lead before long to an inevitable result. For the sake both of giving the Grand Trunk Pacific system a fair chance to develop, and in order to break down once more the reestablished monopoly of the Canadian Pacific Railway, pressure would be put on the Government to obtain a wholesale extension of the Grand Trunk Pacific branch lines, for which there is no commercial justification. Capital would be wasted, operating expenses would be duplicated, and the ultimate solvency of the publicly owned lines would be indefinitely postponed.

For the suggestion which has also been made, that the Canadian Pacific Railway be invited to take over the western portion of the Canadian Northern only, there is in our judgment still less, if that be possible, to be said than for the suggestion that the Canadian Pacific Railway take over the whole. It has all the disadvantages of the former proposal. And it has this further disadvantage: The eastern lines of the Canadian Northern have not any very hopeful outlook, even under present conditions. If they cease to be the complement of the Canadian Northern prairie lines, they have no justification for existence whatever. And yet it is proposed to leave the country to carry the burden of them.

#### POSSIBILITY OF FORMING A COMMERCIAL COMPANY DISCUSSED.

Assuming, then that the Canadian Northern, Grand Trunk, and Grand Trunk Pacific must be united into one system and that this system must remain entirely separate from the Canadian Pacific Railway, we have considered the possibility of forming a new company on a commercial basis, to which the operation of these three undertakings might be transferred. We have come to the conclusion that this course is not feasible under the circumstances as they at present exist.

*The Mexican precedent.*—We have considered what is commonly known as the Mexican scheme. Under this scheme, which was originated by Señor Limantour, the very able finance minister of the Diaz Government, the Government, in return for the guarantee of certain bonds and the payment of a nominal amount of cash, acquired possession of a sufficient amount of deferred ordinary stock of the principal railway companies, on which no dividend was likely to be earned in the immediate future, to give them control of the election of the boards of directors, and therefore indirectly control of the policy of the companies. Similar partnerships between the public authorities and private companies have in recent years become common in the great German cities for the establishment and operation of gas, electric, and street railway undertakings. The Mexican scheme is understood to have worked very successfully so long as Mexico remained an organized community. We do not think it applicable to Canada, where the conditions are entirely different. In Mexico the bulk of the money had been raised by the companies on their own responsibility; there was no question of defaulting on fixed charges; the systems were practically complete; and no large amounts of new capital were required. In Canada the bulk of the money has been raised on the responsibility of the Government; the companies can not meet their fixed

charges; the systems are far from complete; and much new capital will have to be provided, which can not be raised by the companies on their own credit. We can not, therefore, recommend that the Mexican precedent be followed.

*The New York subway precedent.*—There is a precedent in the New York subways for a scheme under which the railway is constructed and owned by the public authority, and its operation is entrusted to a company, which finds capital to an amount representing the value of the equipment and takes a lease for a period of years upon terms that the company receives a return of 5 or 6 per cent as a first charge on the profits, while profits beyond that figure are divided in agreed proportions between the company and the public authority. The New York partnership scheme, however, has reference to an undertaking with every prospect of making a substantial return on the capital involved from the outset. There is no such prospect here. We have to contemplate a condition of affairs in which for a good many years to come the operation will not yield a commercial return on the capital already invested. A promise of the whole return, therefore, would not tempt the outside capitalist; still less would the offer of a portion of it. To induce outside capital to come in and share the risk, it would be necessary for the Government to guarantee a return upon it of not less than  $4\frac{1}{2}$  per cent or 5 per cent forthwith and to offer a prospect of partnership in the valuable reversion later on. And seeing that, with the guarantee of the Government of Canada behind it, all the money requisite could be borrowed at 5 per cent without any reversion, the offer of a reversion would be, in effect, to deprive the people of Canada of a portion of the return when they have earned the right to receive the whole.

Further, we have no reason to think that such an offer, even if made, would attract the necessary capital. The speculative investor likes to see his profit in the near future. In this case he would have to wait a good many years before he could expect any return on his money beyond his fixed  $4\frac{1}{2}$  or 5 per cent. Under present market conditions an investor prepared to take some risk can do much better for himself than this.

#### CANADIAN RAILWAYS SHOULD BE UNDER CANADIAN CONTROL.

There is yet another reason why we do not think that, even if it were possible, any attempt should be made to form a new company, either on the Mexican or on the New York subway model. Such a company could not be Canadian. The capital would have to be found elsewhere, and the control would follow the capital. We think Canadian railways should be under Canadian management.

#### PART V. THE DOMINION RAILWAY CO.

##### GOVERNMENT OPERATION NOT RECOMMENDED.

Having then arrived at the conclusion that the transfer of the three undertakings to a commercial company is not feasible, we recommend that they be handed over to a board of trustees to control and manage on behalf of, and on account of, the people of Canada. The trustees

should be organized as a company with a nominal capital. But in effect they would be a public authority.

Before going further we desire to make a fundamental point clear. We express the conclusion to which we have come both in negative and positive forms. We recommend:

(1) That the Government do not acquire or undertake to operate any further railways; but

(2) That these three railways, Canadian Northern, Grand Trunk, and Grand Trunk Pacific, be transferred by act of Parliament to an independent board of trustees (incorporated as a company), constituted as we shall hereafter describe.

These recommendations, from our point of view, hang together and must be regarded as inseparable. We do not recommend the transfer of the three companies at all, unless our recommendations as to the method to be followed are also substantially accepted. That the Government should itself take over the railways, and they should then be operated under the control of a parliamentary minister of railways, is a policy which in our judgment would not be in the best interest of Canada.

Our personal belief is strong that, in normal circumstances, railway enterprise is a matter best left in private hands, subject to proper regulation by the Government. Were we asked to advise in the case of the railways of the United Kingdom or the United States, which have been constructed by private companies, with money found by private investors, we should give effect to this belief. We go further and consider that, in the case of the Canadian Pacific Railway, as to which the Government does instruct us to advise, the fact that it received large help from public sources in its early days, is not any reason why the existing status of the company should now be disturbed. This company has carried out its bargain. It has repaid to the Government large advances made in earlier years. We believe that Canada has had good value for what it has given. We think that it is in the interest of the country that this company should be rich and prosperous, for such companies can be expected not only to give the best service, but to be best able to provide in time to meet new developments as they arise. We have had no hesitation, therefore, in coming to the conclusion that the status of the Canadian Pacific Railway should be left undisturbed.

But in the case of the Canadian Northern, the Grand Trunk, and the Grand Trunk Pacific the circumstances are not normal. These companies have broken down. We see no way to organize new companies to take their place. Their only possible successor is in our view a public authority. We are confronted with a condition and not a theory.

#### RECOMMENDATION OF INDEPENDENT BOARD OF TRUSTEES.

Our formal recommendations are:

1. That a board of trustees be constituted by act of Parliament and incorporated as "The Dominion Railway Co."
2. That the ownership of the Canadian Northern, Grand Trunk, and Grand Trunk Pacific Railways be vested in this company.
3. That the Government assume responsibility to the company for the interest on the existing securities of these undertakings.

4. That the Intercolonial (including the Prince Edward Island) and National Transcontinental Railways be also handed over by the Government to the company.

5. That the whole of these railways, the Canadian Northern, the Grand Trunk, the Grand Trunk Pacific, the Intercolonial, and the National Transcontinental, be operated by the company as one united system.

#### CONSTITUTION OF BOARD AND TENURE OF OFFICE.

We now proceed to set out these recommendations in more detail.

The trustees should be five in number. The first trustees should be named in the act of Parliament constituting the board.

The tenure of office should be the same as that of judges of the Supreme Court, with the exceptions hereafter noted. Three trustees, one of whom should be the chairman, should, if possible, be men of railway experience. They should be required to give their whole time to their duties, and salaries should be fixed adequate to command the services of the best men. Of the two remaining trustees, we think it would be desirable that one should be selected on the ground of business and financial experience, and the other as specially possessing the confidence of railway employees. They should not be expected to give their whole time. Their maximum salary might be laid down in the act, to be adjusted later when the requirements of the position became evident. Every trustee on appointment should be required to divest himself of all interest in Canadian railway bonds or stock, and should further satisfy the appointing authority that he has no other interest that conflicts with his duties as trustee.

All appointments other than those of the original trustees should be for a fixed period of seven years, except that in the case of a casual vacancy, owing to death or disability or resignation, the appointee should hold office only for the remainder of the term for which the trustee whom he replaces was appointed.

Every trustee should be eligible for renomination and reappointment.

Vacancies should be filled, in the case of a railway member, by appointment by the Governor General in council, on the nomination of a majority of the remaining trustees; and in the case of other members, by appointment from a list of three names, similarly nominated. Should the Government refuse to approve a nomination, it should devolve upon the trustees to submit a new name.

The original trustees should vacate their positions according to the following scheme: The three railway trustees should retire after three, five, and seven years, respectively; the order of retirement amongst the three being determined at the date of the trustees' assumption of office. The two remaining trustees should retire after four and six years, respectively; their relative position between themselves being similarly determined.

Every trustee should retire on attaining the age of 70 years.

#### BOARD TO BE NONPOLITICAL.

We desire to call attention to the extreme importance that the board should not assume, or even be suspected of assuming, a political complexion. In the United States an attempt has been made to

guard against this danger by statutory provision that not more than four out of the seven members of the Interstate Commerce Commission shall belong to the same political party. We do not recommend that this precedent be followed, as we think politics have nothing to do with the matter; and any such restriction might hamper the Government in their choice of best men. But should it be desirable in the public interest to select trustees of recognized political affiliations, we think it most important that the spirit of the United States legislation should be borne in mind, both by the Government in making the original selections, and by the trustees themselves in recommending names to fill any subsequent vacancies.

#### BOARD TO BE PERMANENT AND SELF-PERPETUATING—AUSTRALIAN EXPERIENCE.

We recommend that, subject to the power of the Government to refuse to confirm a nomination, the board of trustees should be a permanent self-perpetuating body, and we attach very great importance to this point. The four older States of Australia, New South Wales, Victoria, South Australia, and Queensland have had a long experience of public ownership. In each State the history has been very similar. Originally, the railways were managed under the direct control of a minister of railways, responsible to Parliament. In each State the system was found unsatisfactory. In each State commissions were appointed, with functions substantially similar to those which we are recommending to be conferred upon the board of trustees. In each State the result was improvement. But the Australian commissioners were only appointed for five-year terms. And the lack of permanence in the commissioner's tenure of office prevented a permanent success. The first years of the commission's term were usually the most successful, for then the commissioners had the freest hand to manage their undertaking on commercial lines. Some of the States have gone through a checkered history. The commission has been abolished, and the management has been transferred back to a political minister. Once more the result has been unsatisfactory, and a new commission has been appointed, only in turn to fail of success. The main cause, as we read the story, has been the lack of permanence of the commission and the short tenure of office of the individual commissioners. We therefore think it essential that the board of trustees shall be permanent, nonpolitical, and, subject to Government approval of each new nomination, self-perpetuating.

#### RAILWAYS NOT A PROPER SUBJECT FOR DIRECT PARLIAMENTARY CONTROL.

We have given expression to a strong view that the operation of the railways of the country by a department of the executive government directly responsible to Parliament would be against the interest of Canada. Lest it should appear that this view implies a reflection on the honesty and ability of ministers and members of Parliament, we desire to explain why we entertain it. Our reason is, not that Government by a cabinet responsible to a popularly elected Parliament is a bad government for the ordinary purposes of government, but

that it is not a form of government suitable for the management of a railway undertaking.

In primitive times all government was concentrated in a single hand. The king or chief was at once the lawgiver, the administrator, and the judge. The king as lawgiver prescribed duties and established rights; as judge he decided on the interpretation of those rights and duties between the nation, represented by himself, and the individual; and finally as executive authority he enforced his own judicial decisions with respect to the rights which he had himself established as legislator. Centuries ago the progressive nations of western Europe had outgrown this primitive idea. They had learned to differentiate functions to the extent of making the judge entirely independent both of the legislature and of the executive government. Even under the absolute despotism of Frederick the Great of Prussia a judge could decide a quarrel between a king and an humble subject in favor of the subject. To say nowadays that the administration of justice is not a matter to be left to a minister responsible to Parliament would be to say a thing so obvious as to seem a preposterous truism.

#### GROWTH OF EXTRA PARLIAMENTARY FUNCTIONS OF THE STATE.

But the process has gone further. We are learning that there are other matters which it is well to withdraw from the political arena. It has become a commonplace in England within the last generation to say that foreign policy has been "withdrawn from the sphere of party politics." The same thing had in great measure happened before the war in the case of naval administration; it was more and more becoming the rule in the case of army administration also. In other words, in respect of these three vitally important spheres of national activity, though the form of direct parliamentary control was retained, it had come to be recognized that the affairs were very complicated, that the reasons for action might be good without being such as could publicly be avowed, and that therefore they were best left to experts, carefully selected and then given a mainly free hand. Since the war public opinion on this question has ripened fast. England and France are countries just as democratically governed as Canada. And in England and France the fact that prompt and decisive executive action is inconsistent with detailed parliamentary control is being more and more recognized, not only by the public but by Parliament itself. Numerous boards of experts, with an almost entirely free hand, have been set up in England to take charge of different branches of public activity. It can not be supposed that the lesson learned in war will be wholly unlearned when peace returns. It is hardly likely that countries whose constitutions are based on the English model will go as far as the United States, where the executive and the legislature are almost entirely independent of each other, where the House of Representatives has no direct control of the executive government at all, and where even the Senate can only confirm or refuse to confirm certain appointments, but has no power to secure either the nomination or the dismissal of a single official. But there can be no doubt things are moving in that direction. It is because we think that the management of a railway undertaking, like the control of shipping or of enemy trade, or the work of the

imperial munitions board, is a matter that in the public interest is best left to experts, that we desire to avoid direct parliamentary control.

In this connection it seems desirable to point out that the Prussian railways, certainly the most successful state-operated railways in the world, are not subject to parliamentary control. The Prussian Parliament has not much control over any department of the Government, but over the railways, owing to the fact that, so far from requiring votes of money, they yearly contribute a considerable net revenue for general state purposes, it has even less control than over other departments. The only check on the action of the minister of railways is that afforded by the railways councils, to which we refer hereafter, and whose powers are merely advisory and in no way compulsory. In Canada we are recommending not only that similar railway councils should be established but that the trustees should also be subject to the orders of the railway commission, a body to which Prussia furnishes no analogy.

#### PRIVATE INTERESTS AND PUBLIC INTEREST.

The railway touches the life of the country at innumerable points. It can almost make one city and unmake another. It vitally affects the question whether an industry in one place is more or less profitable than in another. Every city wants to become a railway center, to have railway works located within its limits. And the local member invariably wants it too. Every citizen wants the railway station placed where it best suits his own personal convenience, and wants that every express train shall stop at it. He naturally strives to secure these benefits for himself, and his local member naturally desires to help him in their attainment. The individual citizen, the local member, can not be expected to see the railway situation as a whole: to appreciate, for instance, that an express which stops at every man's local station ceases to be an express at all. Even if he does appreciate it—human nature being what it is—he will probably be quite content if, by bringing political pressure to bear, he can gain an advantage in which his neighbor at the next station does not participate. It is too much to expect of the average merchant, the average manufacturer, that if he finds that by pressure he can obtain for himself an exceptionally low rate, he will refrain from asking for it, because it gives him an unjustifiable advantage over a rival, or because he knows that the balance of net revenue must be made up by unreasonably higher rates paid by other people's traffic.

It is only when the management is protected from the pressure of special interests that a railway can be managed in the interest of the public as a whole; that it can be expected that improvements and alterations will be made, even though they injuriously affect certain individuals, because they are justified by greater benefits to the people at large. To take one example. We are satisfied that there are many cases where in the interest of economy, duplicate services should be abolished, and duplicate stations closed. Any such change must injure somebody. Supposing that it results in a saving of \$1,000 a year to the taxpayer, while the injury can be measured

by a loss of \$25 a head to three or four people, clearly the change ought to be made. But if the three or four men can get their grievances voiced in Parliament, while the taxpayer is an abstract entity with no one to speak for him, probably the change will never be made. There is no need to multiply instances. We believe that the history of railways all over the world, where the management is directly under a minister responsible to a democratic parliament, confirms our position that under such a system the public suffer because special interests obtain concessions at the expense of the community as a whole. It is for this reason that we have emphasized our recommendation that the management of the railways be intrusted to a body independent of politics.

#### CONTROL OF DOMINION RAILWAY BY RAILWAY COMMISSION.

At the same time we recognize that the nonpolitical body, which we propose to establish, will neither be infallible nor impeccable. We therefore propose to give to the board of railway commissioners the same full judicial authority over all its actions and refusals to act which the board at present has over the private railway companies. With a board of management appointed on the sole ground of competence, controlled by a commission with power of impartial review, we believe the rights of every citizen to receive fair and equal treatment—and no citizen ought to desire to receive more—will be amply protected. And at the same time the dangers of political influence will be avoided.

#### RELATION BETWEEN TRUSTEES AND THEIR EMPLOYEES.

It has been a common experience in all democratic countries that, where undertakings are in the hands of public authorities, either national or local, the employees are tempted to use political methods to improve their personal position. We think it important that the trustees should be protected against pressure of this kind, which would be entirely without justification, if our proposal, that one of the trustees shall be specially charged to watch over the interest of the employees, is adopted. To obviate the evil, it has often been proposed that employees of the Government shall be deprived of their national vote and employees of a municipality be deprived of their municipal vote. We can not accept this idea. A state servant does not cease to be a citizen, and he has as good a right to exercise his vote as his neighbor, provided he does not use it to obtain for himself an unfair advantage at his neighbors' expense. In this matter the Australian experience is of interest. In the State of Victoria there was in 1903 a fierce strike on the state railways. The men by their conduct alienated all public sympathy and were badly beaten. The Victorian Parliament thereupon passed an act, not indeed disfranchising the railway employees altogether, but depriving them of their votes in their own local constituency; placing them on a separate register, and giving them power to elect, as their special representatives, one member to the council and two to the assembly. In 1906 this act was repealed and superseded by "An act to abolish separate representation in Parliament of public officers and

railway officers." Section 4 of this act, which is still in force, is as follows:

(1) In order that all officers may be enabled to render loyal and efficient service to the State, it is hereby enacted that no person or class of persons employed in any capacity (whether permanently or temporarily) in the public service (including the railway service, the police force, the State rivers and water supply department, and the lunacy department) shall either directly or indirectly take any part whatsoever in or in relation to election of members to the legislative council or the legislative assembly, or directly or indirectly in any way take part in the political affairs of the State of Victoria, otherwise than by recording a vote at a parliamentary election; and no person or class of persons so employed shall directly or indirectly use or attempt to use any influence in respect to any matter affecting the remuneration or position in the public service of either himself or any other person.

(2) If any person so employed is guilty of any contravention of this section, then on proof thereof to the satisfaction of the public service commissioner, the commissioner of railways, the chief commissioner of police, or the State commissioners and water supply commissioners, or the inspector general of the insane (as the case may be), such person may by the said authority be fined any sum not exceeding £10 and may be reduced in class, subdivision, grade, or status, and salary, or he may be dismissed or his services may be dispensed with, provided that such person shall not be dismissed or have his services dispensed with for any contravention of this section without the consent of the governor in council.

We should hope that the employees on the trustees' railways will be content to make any necessary representations as to remuneration or conditions of service through the member of the board specially charged to watch over their interests, and will not attempt to exercise political influence. But should this hope ever be disappointed, we feel confident that public opinion would fully support any Government which introduced and passed a law based on the Victorian precedent.

#### INCORPORATION OF THE DOMINION RAILWAY CO.

The board of trustees should be incorporated, either directly by act of Parliament, or by royal charter under the authority of the act, as the Dominion Railway Co., with a nominal capital. We assume a capital of \$50,000, divided into 500 shares of \$100 each. Each trustee would hold 100 shares. These shares would be entered in the register as held in the joint names of each particular trustee and the minister of finance for the time being. The trustee, being named first, would be entitled to the vote; but he could not transfer his shares without the signature of the finance minister. The charter would provide that no share could be transferred except to a duly appointed trustee, and that the shares were held in trust for the Dominion.

#### TRANSFER OF STOCKS TO TRUSTEES.

In order to give the board of trustees control of the railways mentioned, the following stocks should be transferred to them:

1. *Canadian Northern*.—The \$40,000,000 common stock vested in the Canadian Government should be assigned by the Government to the trustees, and also (subject to what we report below as to compensation for existing equities) the \$60,000,000 still remaining in the hands of private persons.

2. *Grand Trunk Pacific*.—The whole of the common stock should be transferred without payment, except that the actual cash paid for the shares other than those held by the Grand Trunk Co. should be refunded.

3. *Grand Trunk Co.*—The whole of the stock, guaranteed, first second, and third preference, and ordinary, should be transferred. We deal later with the question of the claims of the existing holders.

#### TRANSFER OF RAILWAYS TO TRUSTEES.

*Intercolonial and National Transcontinental.*—We recommend that these railways be handed over by the Government to the trustees. There would be no securities to be transferred, and no money to be paid. The authority of Parliament for the transfer would suffice. We give at a later stage our reasons for this recommendation.

#### CANADIAN NORTHERN SHAREHOLDERS.

We return to the question what, having regard to all the circumstances of a very difficult case, is fair as between the Government and the Canadian Northern shareholders. One point must be dealt with at the outset. Assertions and insinuations have been widely made that public money received by the firm of Mackenzie & Mann have been appropriated by Sir William Mackenzie and Sir Donald Mann to their own use. And these gentlemen are understood to be the holders of the bulk of the Canadian Northern stock. If this charge were true it is evident that they would have no equitable claims.

#### CHARGES OF MISAPPROPRIATION UNFOUNDED.

We are satisfied that the charge is unfounded. During our inquiry at Toronto on February 26 and 27, we inquired fully into the matter, and examined on oath Mr. Hanna, vice president, and Mr. A. J. Mitchell, comptroller of the Canadian Northern system. Both these gentlemen are intimately acquainted with its complicated finances. They gave their evidence fairly and frankly, and in our judgment with an honest desire to make full disclosure on every point on which we sought information. They called our attention to the report of the Government auditors made to the Solicitor General of Canada on April 22, 1914, which is printed in the sessional papers of that year (Nos. 269*b*, *i*, *j*, *l*, *m*). The relevant passage is as follows:

We would particularly draw attention to statement No. 2, being a declaration from the comptroller of the contractors, Messrs. Mackenzie, Mann & Co. (Ltd.) that the contractors have made no profit on their work for the Canadian Northern Railway, other than certain fully paid common stock, which is set out in a statement in our previous report. This declaration is borne out to our satisfaction, from our investigation of the books of said contractors, and also those of the company.

The *viva voce* evidence which we reproduce amplifies and entirely confirms the report of the Government auditors.

Mr. MITCHELL. In addition to that, Sir Henry, in connection with construction there are no contractor's commissions on any of the actual construction. The work was turned in to the railway company at cost. For instance, there is actual construction representing something like \$204,000,000, in which there is no percentage whatever to the contractors. It was turned in at actual cost.

Sir HENRY DRAYTON. How would that be done? What machinery would apply to that work? How did you do it?

Mr. MITCHELL. The work was done by the contractors, Messrs. Mackenzie, Mann & Co. (Ltd.), and it was billed to the company at actual expenditure. The vouchers were all turned in.

Sir HENRY DRAYTON. Was there no allowance for the force work account?

Mr. MITCHELL. Actual expenditure only, as far as Mackenzie, Mann & Co. (Ltd.) were concerned. They were reimbursed for what they had paid out on pay rolls.

Sir HENRY DRAYTON. Generally those pay rolls and that sort of thing cover the usual and proper charges. You were doing it, in effect, under "force" work?

Mr. MITCHELL. Yes, sir; but instead of getting a 10 per cent commission they got the stock of the Canadian Northern Railway. That was the payment the contractors received instead of a cash consideration.

Sir HENRY DRAYTON. The contractors themselves, some of them at any rate, would be acting as superintendents in charge of the work, carrying it on, besides which there would be all the overhead expenses?

Mr. MITCHELL. Yes.

Sir HENRY DRAYTON. Those expenditures would be included?

Mr. MITCHELL. For instance, the Canadian Pacific Railway, we will say, lets a contract to Foley & Co. to do certain work. They in turn let the work to some one else, who in turn will probably let it to station men. Foley & Co. would get their commission. On a large contract they would perhaps work on a 5 per cent or an 8 per cent basis. In place of that 5 per cent or 8 per cent basis, which the Canadian Pacific Railway would pay to Foley & Co. in cash, the Canadian Northern paid Mackenzie, Mann & Co. (Ltd.) in stock.

Sir HENRY DRAYTON. You say there was no allowance at all for superintendence and that sort of thing in these accounts, which is generally covered by the 5 per cent or 8 per cent?

Mr. MITCHELL. Not any for the main contractors; there was nothing allowed for them.

Sir HENRY DRAYTON. Sir Donald Mann gave a great deal of his own time. Do you mean to say he was not paid for that?

Mr. MITCHELL. That was all gone into by the Government in 1914, Sir Henry.

Sir HENRY DRAYTON. We have it in connection with that large item of \$200,000,000 or that sum is near enough. Your idea is that all that large item (it is a large sum, of course), so far as the \$200,000,000 for the construction of the road is concerned, as a matter of fact no profits were obtained by the main contractors, Messrs. Mackenzie & Mann Co. (Ltd.) and that the only profits taken out were the profits of the sub-contractors?

Mr. MITCHELL. That is it.

Sir HENRY DRAYTON. Who were the subcontractors?

Mr. MITCHELL. There were many of them; I guess all the big contractors in Canada and the United States.

Sir HENRY DRAYTON. Your own affiliated interests, were they subcontractors?

Mr. MITCHELL. No, sir; not as far as I know.

Commissioner ACWORTH. You say this was all gone into by the Government. I am a stranger to it, of course. Was it a preliminary inquiry?

Mr. MITCHELL. Yes, sir.

Sir HENRY DRAYTON. In connection with loans in 1914.

Commissioner ACWORTH. But was this question of the contractors gone into?

Mr. MITCHELL. The Government appointed three auditors, who came to Toronto and went through the books of the Canadian Northern from the beginning. Those auditors made a full report to the Government, which is covered by the contents of the Government bluebook.

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Sir HENRY DRAYTON. To complete the evidence in connection with the construction of lines, there is one question I should ask you. The Canadian Northern itself is a constructing company, practically, is it not?

Mr. HANNA. Yes. We are doing all our construction work.

Sir HENRY DRAYTON. Most of the construction is being done through Messrs. Mackenzie, Mann & Co. (Ltd.) on the basis Mr. Mitchell spoke of?

Mr. HANNA. Yes.

Sir HENRY DRAYTON. Most of the activities of the officers would be concerned, outside of purely operating branches, with construction work.

Mr. HANNA. We had other officers, whose main duties were to attend to construction only.

Sir HENRY DRAYTON. I suppose Sir Donald Mann, the vice president, was in charge of construction?

Mr. HANNA. He charged himself with that work.

Sir HENRY DRAYTON. Sir William Mackenzie himself did a great deal of it too?

Mr. HANNA. He did, and did the financing.

Sir HENRY DRAYTON. While they may not have taken profits as contractors, didn't the company properly remunerate them for their services?

Mr. HANNA. Not to the extent of one dollar.

Sir HENRY DRAYTON. So that they worked without salary?

Mr. HANNA. Absolutely so.

Sir HENRY DRAYTON. That is a case of being too modest, because it is not business.

Mr. HANNA. That has been the experience of those two gentlemen. Neither one of them was ever on a Canadian Northern voucher list to the extent of a dollar.

Sir HENRY DRAYTON. Nor of any of their subsidiaries?

Mr. HANNA. Not one.

Sir HENRY DRAYTON. So that while they were working on construction work, neither the company nor anybody else paid them any profits at all?

Mr. HANNA. That is right.

The result of our inquiries leads us to the conviction that both Sir William Mackenzie and Sir Donald Mann had a firm belief in the ultimate success of their undertaking, and in their own ability to carry it to a successful conclusion.

It was therefore obviously in their interest, as owners of all the common stock, that the road should be as well located and as economically constructed as possible. And they did their utmost to attain this end. The success of their endeavors may be judged from the fact that Canadian Northern construction from Tollerton (120 miles west of Edmonton) to Vancouver cost \$88,629 per mile, while the construction of the Grand Trunk Pacific from Wolf Creek (on the opposite side of the Athabaska River from Tollerton) to Prince Rupert cost \$112,000 per mile. It is true that the Canadian Northern had the benefit of the "tote" roads built by the Grand Trunk Pacific between Pembina River and Resplendent, as the Grand Trunk Pacific was first in the field; but as against that it had to face higher costs of labor and material. We believe that, speaking generally, one consideration may be set off against the other. Again, the cost of construction of the Canadian Northern from Port Arthur east to Montreal can be compared fairly to the cost of the construction of the National Transcontinental from Winnipeg to Quebec. The cost of the Canadian Northern was \$52,602 per mile, including in this amount interest at 5 per cent during the construction period, but excluding the Montreal passenger terminal. The cost of the National Transcontinental was \$93,735 per mile, including interest at 3 per cent down to December 31, 1914, but excluding the cost of the Quebec bridge.

#### CANADIAN NORTHERN SUCCESSES AND FAILURES.

The mistakes that have been made by the proprietors of the Canadian Northern lie in unnecessary duplication of lines and in reaching out into territories offering but a poor traffic return, rather than in errors or extravagances in actual construction.

Our conclusion of the whole matter is that the moneys required for Canadian Northern construction have been raised with considerable financial skill at very moderate rates of interest, that the construction has been economical, but that the completion of the system as a separate system would involve a very large capital expenditure on branch lines and terminals in eastern territory, and a large duplication of existing facilities; that it is impossible for the company, unaided, to complete its venture; and that it is absolutely vital to the interest of the country that further duplication should cease.

Under these circumstances, have the Canadian Northern shareholders any claim to compensation? Not, we think, as of right.

But Governments in the past have not taken a stand on strictly legal grounds in their dealings with other companies. There are grounds on which similar action could be justified in this case. The company has done much to develop the prairie Provinces. Its lines there are well located, economically constructed, and valuable for public service. Of the later constructed lines also we can say that they have been well located from the engineering, if not from the traffic standpoint, and economically constructed. And if in recent years the Canadian Northern shareholders were carried away by a wave of unreasoning optimism, at least it may be said for them that almost the whole population of Canada shared their expectations. We think that, on the whole, the equity of the case would be met if the Canadian Northern shareholders were permitted to retain a moderate portion of the \$60,000,000 of shares which they now hold.

#### ARBITRATION RECOMMENDED.

But under the scheme we propose the trustees will operate the Canadian Northern lines as part of a combined system. It will be impossible, therefore, for the Canadian Northern Co., as such, ever to earn a dividend on its separate stock. We suggest that, if it is decided to permit the present shareholders to retain a portion of their holding, the act of Parliament constituting the board of trustees shall contain a provision for arbitration between the trustees and the Canadian Northern Co. and establishing an arbitration board to act forthwith. The trustees should appoint one arbitrator and the Canadian Northern shareholders the other, and the two arbitrators should agree on the appointment of an umpire; failing agreement, an umpire should be appointed by the chief justice of the exchequer court; and the decision of the board should be final.

The arbitrators should be empowered to decide two questions:

(1) What proportion of the Canadian Northern common stock may fairly remain the property of the present holders?

(2) What proportion of the earnings of the Dominion Railway Co. may fairly be regarded as attributable to the Canadian Northern lines?

To illustrate our meaning, we will assume that the arbitrators decide that 5 per cent of the Canadian Northern shares shall remain the property of the existing holders, and further decide that one-half of the total earnings of the Dominion Railway Co. will be fairly attributable to the Canadian Northern lines. Then their decision will mean that, out of any dividend declared in future by the Dominion Railway Co.  $2\frac{1}{2}$  per cent (one-half of 5 per cent) will be payable to the existing Canadian Northern shareholders or their transferees. We think the arbitrators should fix this resulting percentage once for all. It should be made a condition of the settlement that the minority shareholders of the Canadian Northern should by deed irrevocable appoint the trustees as their proxy to vote their shares. Care will of course be taken to provide that the arbitration board shall have regard only to the Canadian Northern lines, as they exist at the date of the passing of the act, and that any subsequent increase of revenue due to the expenditure of additional public money shall be excluded from consideration.

## THE GRAND TRUNK SHAREHOLDERS.

The position of the Grand Trunk Co. is entirely different from that of the Canadian Northern Co. The Grand Trunk Co. has five different classes of shareholders; the Canadian Northern has only common stock. The Grand Trunk shares represent—to what extent it is now almost impossible and quite useless to ascertain, for the company is over 60 years old—actual cash paid; the Canadian Northern shares represent no cash, only a possible reversion. The grand Trunk Co. has always paid dividends on some classes of stock; the Canadian Northern common stock has never even had the prospect of an immediate dividend. The Canadian Northern has been economically constructed and is moderately capitalized. The same can not be said either of the Grand Trunk or Grand Trunk Pacific. The Canadian Northern has a capital of \$54,961 per mile; the Grand Trunk of \$127,340; the Grand Trunk Pacific of \$98,018. Evidently the two companies can not be treated alike. Evidently also the rights of the five classes of Grand Trunk shareholders differ widely as between themselves. We have come to the conclusion that it is impossible for us to determine these respective rights; that any compensation made to the shareholders for the surrender of their shares must be made not to them but to the company as a whole; and that the directors of the company must assume the responsibility of preparing a scheme of equitable apportionment between the different classes and procuring the assents and the legal authority necessary for bringing the scheme into force.

Dealing with the matter on this basis, we have to consider how the fair compensation to the company is to be arrived at. The report of the company for the year ending December 31, 1915, contains a statement of the share capital as follows:

*Statement of stocks and share capital created showing the proportion issued Dec. 31, 1915.*

Description.	Amount created or sanctioned.			Amount issued.			Amount unissued.		
	£	s.	d.	£	s.	d.	£	s.	d.
Four per cent guaranteed stock.....	12,500,000	0	0	12,500,000	0	0			
First preference stock, 5 per cent.....	3,420,000	0	0	3,420,000	0	0			
Second preference stock, 5 per cent.....	2,530,000	0	0	2,530,000	0	0			
Third preference stock, 4 per cent.....	7,168,055	4	6	7,168,055	4	6			
Total preference stocks.....	25,618,055	4	6	25,618,055	4	6			
Ordinary stock.....	24,797,761	2	7	23,955,436	17	3	842,324	5	4
Grand total.....	50,415,816	7	1	49,573,492	1	9	842,324	5	4

The total issued may be taken in round figures as \$240,000,000. It will be seen that roughly one-half is preference and one-half ordinary stock. The London Stock Exchange valuation of this nominal \$240,000,000 is at the present time something like \$70,000,000 or \$75,000,000—ranging from about 56 for the 4 per cent guaranteed stock, which for 10 years has received its dividends in full (except in one year when it went one-half per cent short), down to about 10 for the ordinary stock, which has never received a dividend. The table below shows the dividend history of the last 10 years.

*Grand Trunk Railway of Canada—Dividends paid.*

Year.	Guaranteed.		5 per cent first preference.		5 per cent second preference.		4 per cent third preference.		Total.
	<i>P. ct.</i>		<i>P. ct.</i>		<i>P. ct.</i>		<i>P. ct.</i>		
1906.....	4	\$1,520,404.60	5	\$831,428.64	5	\$615,244.16	3	\$1,046,036.84	\$4,012,114.24
1907.....	4	1,638,952.95	5	831,428.64	5	615,244.16	3	1,064,036.84	4,131,662.59
1908.....	4	1,861,121.49	5	831,428.64	2½	307,822.08			3,000,172.21
1909.....	4	1,915,522.07	5	831,428.64	5	615,244.16			3,362,194.87
1910.....	4	1,960,171.50	5	831,428.64	5	615,244.16	1	174,339.47	3,581,183.77
1911.....	4	2,080,161.11	5	831,428.64	5	615,244.16	1½	523,018.42	4,049,852.33
1912.....	4	2,351,148.07	5	831,428.64	5	615,244.16	2½	871,697.36	4,669,518.23
1913.....	4	2,417,871.06	5	831,428.64	5	615,244.16	2½	871,697.36	4,736,241.22
1914.....	3½	2,129,166.67							2,129,166.67
1915.....	4	2,433,333.33							2,433,333.33
Total.....		20,307,852.85		6,651,429.12		4,614,331.20		4,532,826.29	36,106,439.46
10-year average.....		2,030,785.28		655,142.91		461,433.12		453,282.63	3,610,643.94

It will be seen that the average amount paid in dividends has been \$3,600,000 per annum. So the stock exchange valuation practically capitalizes the dividends on 5 per cent basis. And this, in a rapidly developing country, might be reasonable if the dividends had been earned and could be maintained. But in view of the statement of the company's own officers that \$21,000,000 which ought to have been spent out of revenue for maintenance has not been so spent, it can not be contended that the dividends have been earned. In view of the further fact that the company has to face immediate liabilities of over \$5,000,000 per annum in connection with the Grand Trunk Pacific and of the statement of its own officers that a capital expenditure of \$30,000,000 is immediately required on its own lines to put the company in proper condition to do its existing business, it can still less be contended that the dividends are maintainable. It can not therefore be expected that the trustees should acquire the stock from the shareholders on the basis of past dividends. Even if the Government were to relieve them entirely, as suggested by their president, of their unfortunate Grand Trunk Pacific venture—and as we have already said, we can not think that this request can be reasonably justified—it is evident that the Grand Trunk Co. is not, and will not be for some time to come, in a position entitling it to pay out any money at all in dividends. We regard this entire share capital of the company as being intrinsically of but small value at the present time. On the basis of present value of maintainable income the fair compensation would be very small.

**TERMS OF PURCHASE RECOMMENDED.**

But we do not think that this is the only basis on which the people of Canada should proceed. We think this is a case for generosity rather than strict justice. Canada is under obligations to the Grand Trunk shareholders, who, in the early days, with but small Government assistance, and in competition with the railways of the United States with their vastly greater resources, built up the first Canadian railway system. In later times the company has had further to meet the competition of heavily subsidized Canadian rivals. And it can not be said that at any stage of its history the shareholders have obtained excessive profits on their enterprise. On the whole we

recommend that, on condition of the surrender by the Grand Trunk Co. of their entire share capital, guaranteed, preferred, and ordinary, the trustees grant a certain annuity, charged as a working expense on the whole undertaking of the Dominion Railway Co., for the first seven years, increasing at the termination of that period by something like 40 or 50 per cent. We have left the figures blank as there will be questions of cash in hand, value of stores, etc., which must make the precise figure subject to negotiation. But our meaning is that the first figure should be a moderate but substantial percentage of \$3,600,000 (the average dividend payment for the last 10 years).

#### REAL VALUE OF GRAND TRUNK PROPERTY.

We appreciate that shareholders outside Canada, who can hardly be expected to be fully conversant with the management of their property, will not only fail to see any generosity in this proposal, when it is first made to them, but will believe they are being treated with less than justice. We think it therefore well to set out here in summary form the result of what has been set out at length in previous pages of this report.

1. The revenue of the Grand Trunk applied to dividend has been, on the average of the last 10 years, \$3,600,000.

2. To catch up arrears of maintenance, \$21,000,000 must be spent immediately. This sum is nearly equal to six years' dividend payments.

3. To prevent arrears again accumulating, future maintenance charges must be much heavier than in the past; not less than \$2,500,000, according to the president's judgment, on equipment alone.

4. To put the property in proper condition to deal with existing business, \$30,000,000 of new capital needs to be spent at once. Even supposing the company could raise this capital, and only had to pay 5 per cent for it, it would cost an additional \$1,500,000 per annum.

And this is on the Grand Trunk lines alone, independently of the company's liabilities in respect of the Grand Trunk Pacific. These further liabilities, amounting to over \$5,000,000 a year at the present time, and increasing in the near future to over \$7,000,000, need not be again detailed. The chairman of the Grand Trunk in his letter to the prime minister of Canada, dated December 10, 1915, has stated: "Under present circumstances it is quite impossible for the Grand Trunk Railway Co. to meet the extra liabilities arising from the Grand Trunk Pacific Railway." And in his evidence at our inquiry in Montreal on February 24, 1917, the president of the Grand Trunk stated, not only that it was an impossibility for his company to carry out their contract, but that it always had been impossible. And yet there is no question of the company's legal liability on the contract. And it is the Grand Trunk Co. that is primarily responsible for the initiation of the Grand Trunk Pacific enterprise.

## INTERCOLONIAL AND NATIONAL TRANSCONTINENTAL.

We have recommended that the Intercolonial and National Transcontinental Railways be handed over to the trustees. And this recommendation we make for various reasons. We are opposed, as we have already said, in principle, to Government operation, and this principle applies to these railways just as much as to the Canadian Northern, Grand Trunk, and Grand Trunk Pacific. But, apart from general principles, there are many strong arguments for the transfer in the special circumstances of the case.

## TRANSFER OF NATIONAL TRANSCONTINENTAL RECOMMENDED.

Dealing first with the National Transcontinental, it is evident the line can not be left as it is. Its very name implies that it was built as a national highway from ocean to ocean. It can not be left to terminate in a dead end at Winnipeg. Its prospects of becoming a paying concern, and making to the people of Canada an adequate financial return for the \$160,000,000 they have invested in it, are not very good in any case, but its prospects are hopeless if it terminates at Winnipeg. Winnipeg is primarily a collecting and distributing, rather than a producing, center. What it does produce goes mainly westward. The Canadian Pacific Railway can collect and distribute in the west; it can collect and distribute in the east; it has its own ocean ports and cross-Atlantic connections; and the whole of its traffic between east and west it will carry over its own road, between Winnipeg, on the one hand, and Toronto, Montreal, and the ocean ports on the other. Exactly the same thing must happen in the case of the Dominion Railway Co., once the Canadian Northern, Grand Trunk, and Grand Trunk Pacific Cos. are combined into one system. If the National Transcontinental Government Railway is left out of this system it will starve.

## TRANSFER OF INTERCOLONIAL RECOMMENDED.

## IN THE LOCAL INTEREST.

We recommend the transfer of the Intercolonial on three practical grounds: The interest of the Maritime Provinces, the interest of the Canadian taxpayer, and the interest of the railway undertaking itself.

Speaking generally, the growth of the Maritime Provinces in the last 20 years has been slower than that of the rest of Canada. And yet raw materials are readily accessible, and wages are certainly as low as elsewhere. Now a large and important part of these Provinces is served only by the Intercolonial; the Intercolonial is merely a local line, terminating at Montreal, and with no direct connection with the markets of Ontario and the west; and the Maritime Provinces have suffered from this isolation.

The recent congestion on the Intercolonial has clearly demonstrated the inadequacy of its facilities to cope with its business. Either it must construct its own terminals at Montreal, which would cost not less than \$10,000,000 to \$15,000,000, and would be a further instance of unnecessary and wasteful duplication of facilities at the public expense, or it must have access as of right to the Grand

Trunk terminals, where at present it comes in only subject to the primary regard of the Grand Trunk for its own business. That it is in the interest of the inhabitants of the Maritime Provinces to be served, not by what is after all only a glorified branch, but by a great through system opening up to them all the markets of the country on an equality with Montreal, Toronto, and the other manufacturing centers, admits of no doubt. And it is in the interest of Canada, also, for if one member of the body gains all the members gain.

The absorption of the Intercolonial in the Dominion Railway Co. would further afford the opportunity for redressing a hardship from which the Maritime Provinces at present suffer. The Intercolonial pays no local taxes, and this exemption should cease. It never, in our opinion, had any justification. A municipality, whose streets are subject to the burden of Intercolonial railway crossings, has precisely the same claim to treat the railway as a ratepayer and assess it for local taxes, as if the crossings belonged to the Canadian Pacific Railway. Exemption of public institutions used for purely public purposes, may perhaps be justified; but in the case of a railway, local taxes are as much a part of operating expenses as transportation or maintenance charges; and they ought to be paid, whoever may be in control of the railway operation.

We are aware that there is a widespread impression in the Maritime Provinces that the Dominion Government is implicitly pledged to give them low rates. Lest there should be any fear that these alleged rights might be interfered with, we think the act of Parliament should provide that no general increase of the local rates at present in force on the Intercolonial shall be made by the trustees without the previous assent of the railway commission.

#### IN THE GENERAL INTEREST.

Secondly, we recommend the transfer of the Intercolonial in the interest of the Canadian taxpayers. The capital cost of this railway, according to the returns of the Department of Railways and Canals for 1916, is \$106,312,705.25. To pay interest on this investment the railway ought to earn a net revenue of, say, \$5,000,000. It has, indeed, recently been ingeniously argued that it ought to have earned interest at a commercial rate from its first inception, and that all the interest that it has not earned during its whole existence ought to be capitalized and compounded to ascertain the real cost of the railway to the people of Canada.

We can not accept this somewhat fantastic argument. If this theory were accepted, it is manifest that a similar course ought to be followed in the case of ordinary railway companies. Interest which, of course, has never been paid, ought to be calculated in the same way, on all the cash subsidies which private lines have received and on the value of all the land grants which they have obtained, and all this ought to be carried into an imaginary account on which imaginary earnings ought to be obtained. Further, the capital account of every railway company ought to be recast in the same way, so as to carry forward into the account the money that ought to have been paid for dividends on the share capital, in years when either no dividends or only insufficient dividends were in fact paid.

Whatever question there may be as to the propriety of endeavoring to earn interest on capital, it will hardly be questioned that the line ought to be so managed as to at least earn operating expenses, including therein a proper allowance for taxes. And even ignoring the early history of the undertaking, and considering merely the years from 1889-1916, during which the greatest advance has taken place in Canada, and the traffic of Canadian railways has shown the greatest increase, the Intercolonial has paid no taxes and still not earned operating expenses. During this period the total operating deficits reported amounted to \$11,188,885.50. The total operating surpluses amounted to \$1,651,239.73. In addition, however, there was, in the years 1912-1916, an amount of \$3,046,406.86, charged to working expenses and devoted to renewals, which under the accounting methods in force before that date would have been credited to surplus. Adding together these two latter figures, and deducting them from the deficit, we find that in the 28 years from 1889-1916 there was an accumulated deficit on operation of \$6,491,232.91.

And this is not all. Down to the year 1908 no charges were made against revenue for necessary renewals and replacements. Now, when the plant is added to and improved, it may be right to charge to capital the excess cost of the addition. But charging to capital the cost of mere renewals and replacements can not be justified. From 1908 to 1911 there was charged to operating expenses, under the head of renewals of rolling stock, rails, and ties, the sum of \$510,000 per annum. But this was quite an inadequate allowance, as is shown by the fact that since then, in addition to the annual \$510,000, the further sum of \$3,046,406.86, already mentioned, has already been charged to renewals.

The result of charging such items as renewals to capital account is clearly shown by the growth of the cost of the railway per mile of line. In the case of a new line, with constant extension of territory and the necessity for new terminals and increase of equipment, such a figure may not prove much. But in the case of an old-established property like the Intercolonial, it certainly, in part, indicates operating losses and improper capital inflation. The return of mileage for the year 1899 shows 1,315 miles, with a cost per mile of \$37,957.36. For 1911, the mileage is shown to be 1,455, and the cost per mile is returned as \$57,419.87. In 13 years, therefore, the capital cost of the system per mile had been increased on the system's books no less than 51.27 per cent. During the same 13 years surpluses of \$1,594,954.64 and deficits of \$3,915,193.39 were reported. It is obvious that the surpluses were illusory and the deficits much greater than returned.

Since 1911 the cost per mile has further increased, but this is largely due to expenditure in connection with the new Halifax terminals, legitimately charged to capital. And since 1912 that the proper practice of charging renewals to working expenses has been adopted.

IN THE INTEREST OF GOOD MANAGEMENT.

Lastly, we recommend the transfer of the Intercolonial in the interest of the undertaking itself. We have no doubt that it will be better operated as part of a great system than it ever can be as an independent property. It is not to be expected that able and

ambitious men will do as good work on a mere local railway, with scant opportunities of advancement or distinction, as when they have the chances of promotion which a great system affords. If their prospects are bounded by the horizon of the Intercolonial, they will either grow slack or carry their services elsewhere. We have already referred to the economy which can be effected by the establishment of joint terminals in Montreal. And the same thing is true in the matter of equipment. A nation-wide system can average its provision of rolling stock, and meet temporary shortages in one place from temporary surpluses in another. A small concern can only provide rolling stock to meet maximum requirements on condition of having a surplus standing idle for the greater part of the year.

#### MINOR RECOMMENDATIONS.

We think the trustees should not be required to accept the responsibility for various undertakings connected with the railway lines transferred to them, such as, for example, the Grand Trunk Pacific Dry Dock at Prince Rupert and the proposed harbor improvements at Halifax. We would leave the trustees to settle by agreement with the Government the list of property not to be transferred to them.

In the case of some of the constituent companies<sup>1</sup> of the Canadian Northern, of which the Canadian Northern Quebec is the most important, the parent company, though in every case it has a controlling interest, does not own all the shares. We think the trustees should at an early date, by agreement, or by legal procedure, take steps to acquire the outstanding shares. This is desirable, not only to avoid possible conflict of interest hereafter, but also to avoid any necessity for keeping separate accounts.

We find that the title to certain property which is used for railway purposes has not yet been vested in the Canadian Northern. It was among the conditions on which the Government loan of \$45,000,000 was granted in 1914, that this should be done. We pointed the omission out to Mr. MacLeod, the company's general manager, who stated that it was merely an oversight, and that the intention was that all titles should be got in.

In cases where the title has not been got in, it is, we understand in the hands of affiliated interests. We say "we understand" because in the limited time at our disposal we have not attempted

<sup>1</sup> The list is as follows:

Railway.	Total share capital.	Held by or on behalf of Canadian Northern.	Held outside of Canadian Northern.	Percentage.
Canadian Northern Quebec Railway Co.....	\$6,550,000	\$2,000,000 { 5,144,600	\$2,405,400	74.7
Quebec & Lake St. John Railway Co.....	4,524,000	4,002,800	521,200	88.46
Duluth, Winnipeg & Pacific Railway Co.....	6,000,000	3,060,000	2,940,000	51

<sup>a</sup> The Canadian Northern Railway Company owns \$2,000,000 stock of the Canadian Northern Quebec directly; it also owns 71.9 per cent of the stock of the Northern Consolidated Holding Company (Ltd.), which owns \$5,144,600 stock of the Canadian Northern Quebec.

There are also outstanding small amounts of from 500 to 3,000 shares in other companies. But these are presumably only directors' qualifications.

to have search made of all the different titles involved. It is clear, however, that all lands on which there are Canadian Northern rails, whether main or siding tracks, or switches leading to its elevators, or team tracks, ought to be vested in the company, and not left in the hands of any affiliated interest or constituent or a subsidiary company, even although the Canadian Northern Co. may have a stock control of the company.

We think that the act should vest in the Canadian Northern Railway Co. all lands which have actually been put to the purpose of the railway system, subject to all equities (other than those of any of the affiliated companies, or of Messrs. Mackenzie & Mann (Ltd.), or of those gentlemen in their personal capacities) outstanding at the date of the publication of this report.

We think that the act should also refer to the Exchequer court for arbitration the question of all other outstanding equities, if any. It is of course manifest that, to the extent to which outstanding claims may be found to exist, reductions would have to be made in the valuations which we have placed upon the assets of the Canadian Northern Railway Co.

The trustees will also have to consider at an early date the position of the holders of the Canadian Northern 5 per cent convertible income debentures. These debentures to the amount of \$25,000,000 were placed in London, in the years 1911 and 1912, some of them at a considerable premium, and the company obtained more than \$24,000,000 in cash for them. The trust deed under which they were issued charges them upon the assets of the company subject to existing charges, but entitles the holders to receive interest only from income earned. Since June, 1915, no interest has been paid. The Dominion Government in 1914 recognized that in respect of capital these income debentures rank in front of the Government's own loans. But the income on them is not being earned. Nor is it likely to be earned, at any rate in full, in the proximate future. The fact, however, that they are a charge upon the assets, or rather upon certain assets, and upon the income, if earned, of the Canadian Northern or some portions thereof, might cause complications in the operations and accounts of the unified system. And we think that on its own merits their case is entitled to sympathetic consideration. We think that the trustees should negotiate a settlement with the holders, on the basis of substituting for their right to 5 per cent in the indefinite future a right to receive either a lower rate of interest, say perhaps 3 per cent, from the date of vesting the Canadian Northern in the trustees; or in the alternative, say, 1 per cent at once, 3 per cent after a certain date, and 5 per cent from and after a date still further postponed.

#### LEGAL POSITION OF TRUSTEES.

The trustees would hold the Intercolonial and Transcontinental lines as legal owners of the physical property, and they would hold the Canadian Northern, Grand Trunk, and Grand Trunk Pacific through their ownership of the capital stock. The existence of these three companies, and also of their various subordinate companies, would nominally continue unchanged, and there could consequently be no question of the disturbance of the rights of the bond and debenture holders.

## OPERATION OF DOMINION RAILWAY CO.

So soon as the railways above specified have been transferred to the trustees we recommend that they should proceed to operate them under their own control. Some time must necessarily elapse before all the transfers are made; but we see no reason why the trustees should not take charge of each railway as soon as the arrangements for its transfer are completed. The ultimate purpose, to be kept in mind from the beginning should be that all the railways should be operated as one system.<sup>1</sup> For purposes of day to day management there should, we think, be established an operating committee, as members of which the trustees should have power to add to themselves not more than four officers having the rank of vice presidents. Sitting in this committee these officers should have votes equally with the trustees; but all matters of policy and finance should be reserved for the trustees alone. We would leave it to the future discretion of the trustees whether they would operate the railways as a single system from one center, or whether they would constitute two, or it may be more, grand divisions.<sup>1</sup>

## FINANCE OF DOMINION RAILWAY CO.

Under the scheme which we recommend the trustees will enter into possession of a complete and self-contained system of 20,000 miles. The present fixed charges amount to about \$34,000,000 per annum, or \$1,700 per mile. If we allow another \$6,000,000 for annuity to Grand Trunk shareholders, for composition with Canadian Northern Income Debenture holders and for interest on new capital required immediately, there will be at the outset fixed charges of roughly \$40,000,000, or \$2,000 per mile. In respect of the 3,777 miles of this system which are comprised in the present Government railways there will not be a single dollar of bonded indebtedness, and this fact will be of considerable help to the trustees in their necessary financing. We assume that, in addition to the purchase of equipment by means of equipment trusts, it will be necessary to raise a good many million dollars for improvements and betterments, some of which, such as a new Grand Trunk yard at Niagara Falls, are very urgently needed at the present moment. We suggest that a general and refunding mortgage be created, charged first upon the Intercolonial and Transcontinental lines, and secondly, upon all the remaining lines of the system, subject to the existing mortgages. The amount of the mortgage should be unlimited. The rate of interest on each issue should be determined at the time the issue is made. We do not think that an express guarantee of the Government would be required, for the Intercolonial, which has no bonded indebtedness, is now earning a substantial net income, and when it becomes part of a great system we can not doubt that this net income will increase. In any case the guarantee should be unnecessary in a comparatively short time; for a system of 20,000 miles in a rapidly developing country should

<sup>1</sup> We understand that the Canadian Pacific Railway had at one time independent operating and traffic vice presidents for the lines east and west, respectively, but that of recent years this has been changed, and that now the whole system is controlled from one center and that the Canadian Pacific Railway board are satisfied that the change has been an improvement.

be able, before many years are out, to carry unaided bonded indebtedness, which would not, we estimate, need much to exceed \$2,000 per mile.

#### OPERATION TO BE ON A COMMERCIAL BASIS.

We have recommended that the Intercolonial and the Transcontinental lines should be handed over free of cost for the reasons which we have given above; but we think it should always be borne in mind, both by the trustees and by the public, that the real capital of the new system includes the cost of these lines. In other words, the trustees are responsible for a return, not merely on the capital of the companies' railways acquired, but also on the capital invested in the Government railways, for though the Government railways have no separate capital account, properly so called, their construction has cost the people of Canada \$276,000,000, and the people of Canada are paying interest on this amount every year out of the general taxation of the country.

We would go further and lay it down in terms in the act of Parliament creating the board of trustees that it was the duty of the trustees to operate their system as a commercial concern and to make no general reduction in rates, unless ordered so to do by the railway commission, until interest at a reasonable rate was earned on the whole capital value of the undertaking, and this for two reasons. We believe that the obligation to work the system as a commercial concern in competition with a well-established and well-equipped rival will be a stimulus to efficient and economical management, and further we think that reductions in favor of certain classes of business and certain commodities which bring the railway rates below a reasonably remunerative basis are wrong in principle. Their effect is to conceal the fact that a bounty is being given to certain persons and certain places at the expense of the community at large. If bounties are to be given, as to which it is not for us to express an opinion, we think they should be openly voted by Parliament and not given under the disguise of a railway rate reduced to an unremunerative basis.

#### WIDE POWERS TO BE GIVEN TO TRUSTEES.

We consider that, subject to the jurisdiction of the railway commission, the trustees should have the widest powers in the management of their undertaking. They will have to decide how best they can secure both efficiency and economy by combining what have been hitherto competing systems. They must decide what new connections can be made to provide shorter routes; which lines shall be operated as main lines and which only as branches; in what cases two single lines can be used as one double line; where new extensions can be profitably built; how new capital can best be provided; whether any of the existing lines shall be, at least temporarily, abandoned; but they should always keep in mind that the intention is not to establish local monopolies but to maintain reasonable competition between their system and that of the Canadian Pacific Railway. They must have discretion to say how far net profits are imperatively required for railway purposes and how far they may be safely taken to pay a dividend on the share capital. In a word, we would entrust

to the trustees all the responsibilities and powers which in an ordinary company are divided between the directors and the shareholders. We believe that the desire to render the best possible account of their stewardship to the people of Canada will be a sufficient motive to induce them to manage the railways efficiently and economically.

#### FINANCIAL RESPONSIBILITY OF GOVERNMENT.

We have recommended that the Government should assume responsibility toward the trustees, but not directly toward the present holders, for the interest of all the securities charged on the new combined system. We can not attempt to forecast with any accuracy what that liability will be, but the following table which we have compiled shows the results for the year ending June 30, 1916, of the operation of the various undertakings which we propose should be put together.

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*From reports to Department of Railways and Canals, June 30, 1916 (except Grand Trunk Pacific branch lines).*

	Canadian Northern.	Grand Trunk.	Grand Trunk Pacific.	Grand Trunk Pacific branch lines.	Intercolonial.	Transcontinental.	Total.
Operating revenues.....	\$35,476,275.08	\$39,155,040.10	\$4,963,188.88	\$1,319,509.16	\$15,698,681.91	\$5,798,516.09	\$104,399,281.20
Operating expenses.....	28,244,186.12	28,732,012.09	5,902,843.30	1,370,133.51	13,320,163.16	5,360,061.58	79,991,430.26
Net operating revenue.....	7,232,088.96	10,423,027.91	1,060,345.58	150,534.35	2,363,478.75	438,454.51	24,407,850.84
Outside operations.....			10,388.55				10,388.55
Taxes.....	741,508.11	853,594.39					1,595,102.50
Operating income.....	9,490,580.83	9,519,433.02	1,070,904.13	150,534.35	2,363,478.75	429,454.51	22,823,314.89
Other income.....		3,631,121.45				37,693.54	3,711,914.99
Gross income.....	9,490,580.83	13,150,554.47	1,070,904.13	150,534.35	2,363,478.75	466,138.35	22,496,119.38
Interest on funded debt.....	9,985,153.14	7,644,631.07					17,629,784.21
Other charges.....	506,010.29	2,415,539.70			167,214.29	808,750.86	3,837,514.14
Dividends.....		2,433,333.33					2,433,333.33
Total income deductions.....	10,391,163.43	12,493,504.10			167,214.29	808,750.86	22,683,632.68
Surplus and loss for year.....	1,900,417.40	660,050.37	* 1,070,904.13	150,534.35	2,196,264.46	1,342,615.51	* 2,883,482.70
Profit and loss items.....	267,885.85						* 2,967,885.85
							* 2,365,600.85
Add interest to be provided for.....				538,760.16			12,452,233.76
Add estimated loss, Prince Edward Island Railway.....	5,445,339.56		6,668,084.04				260,000.00
Total to be provided.....							12,902,333.00

<sup>1</sup> Loss.

<sup>2</sup> Div. on guaranteed stock.

<sup>3</sup> Before charges.

<sup>4</sup> Surplus.

<sup>5</sup> Deduct.

## PROSPECTS OF DOMINION RAILWAY.

From this table it will be seen that there was a nominal surplus of income over expenses and fixed charges of \$2,365,000. But the above figure took no account of interest which had to be provided for on the Canadian Northern, Grand Trunk Pacific, and Grand Trunk Pacific branch lines, amounting together to \$12,650,000; nor for a loss of some \$250,000 on the operation of the Prince Edward Island Railway. The total of these items is \$12,900,000. Deducting the surplus, it would appear that, if these railways had been in the hands of the trustees for the year ending June 30, 1916, and if all the capital charges had been met out of income, the trustees would have had to call upon the Government for about \$10,500,000 to make up the deficiency.

We assume that the results for the year ending June 30, 1917, will not be greatly different. Gross receipts may rise, but operating expenses are rising fast, more especially owing to the high price of coal, the severe weather, and the congestion of traffic. When the trustees assume office, they will have to face, in addition to the present interest charges, the cost of settlement with the convertible income debenture holders of the Canadian Northern, of the annuity payable to the Grand Trunk shareholders, and the interest on the capital necessary to complete the system and to make urgently needed betterments and additions. Further, for the reasons we have already given, we do not consider that the Grand Trunk dividend is a real net surplus. It ought to go back into the maintenance of the property. On the other hand, the economies resulting from the amalgamation of the Canadian Northern, Grand Trunk, and Grand Trunk Pacific systems ought to be very large, as soon as time is allowed for the elimination of wasteful duplications. We do not venture to predict; but we should hope that the economies will at least balance the additional charges for new capital.

If, then, we take as a starting point a deficiency of roughly \$12,500,000 a year; if we assume that this will not seriously increase for the next year or two, but will not, on the other hand, diminish; then, in order to reach a position of solvency, the Dominion railways would need to earn an additional gross income of some \$50,000,000, and to retain one-quarter of that amount as net. The present gross income is well over \$100,000,000; and it is not unreasonably sanguine to hope that it may increase 50 per cent in the course of six or seven years if Canada continues to progress at a normal rate. But that depends, not on the railway management, but on the incalculable future.

We do not make any detailed estimates either of probable earnings or of probable reductions in operating costs to be obtained by the trustees' system. We have, however, every confidence in the country, in its resources and possibilities.

The Canadian Pacific has been and is a great success. Combined under a common management, with one evenly balanced transcontinental system in the place of two disjointed ones, with adequate branches both in the west and in the east, we are confident that in the not far distant future the success of the Canadian Pacific ought, at least to a very large extent, to be repeated. The Dominion Railway at an early date should have an operating revenue as large as

that of the Canadian Pacific. With proper economic and politically undisturbed management, the attainment of a satisfactory financial result is only a question of time.

#### SPECIMEN ECONOMIES RESULTING FROM COMBINATION.

We will not risk embarrassing the future management by enumerating possible economies in detail. But it is clear that very considerable savings can be made by the amalgamation of duplicate outside and local agencies; by joint stations and joint service at many points; by coupling up the prairie branches so as to afford the shortest outlet market to centers and the like. Great economy can also be secured in operation of the through traffic. East of Winnipeg this will require a small amount of new capital expenditure. We understand that the land between Cavell Station on the Transcontinental and Longue Lac Stations on the Canadian Northern lends itself to cheap and easy railway construction. The distance is 35 miles. By the construction of this short link, a great saving of operating mileage can be made, and the best portions of both systems utilized. By the combinations of the Transcontinental from Winnipeg to Cavell, the new link from Cavell to Longue Lac, and the Canadian Northern forward from that point, a route superior from every point of view to the existing routes can be formed for Toronto business. The Winnipeg-Toronto mileage by this route would be only 1,197 miles. This is shorter than any of the three existing routes, which are as follows: Canadian Pacific, 1,232; Transcontinental and Grand Trunk, 1,256; Canadian Northern, 1,309. The combined route will also greatly improve the handling of traffic from Port Arthur to all points on the Transcontinental east of Cavell. This traffic at present is hauled back to Superior Junction, 188 miles to the northwest, before it starts on its eastward journey. And at present much of the coal used on the line follows this roundabout route. For grain sent east from the Port Arthur elevators to Quebec and beyond, the combined route will also offer better facilities than either line could afford separately. Similar economies can be secured west of Winnipeg, without any expenditure beyond that necessary for coupling up closely adjoining tracks. The Winnipeg-Vancouver route can be shortened 40 miles. We need not multiply instances or attempt to translate the resulting economies into dollars. It is sufficient to say that the mere running expenses of a through freight train are not less than 80 cents a mile. Fifty miles means \$40. Multiply this by 365, and there is a saving of nearly \$15,000 per annum on each train, sufficient to pay the interest on \$500,000 Grand Trunk Pacific 3 per cent Dominion guaranteed bonds. And this is only the mere running cost, and takes no account of other transportation expenses or of the reduction of maintenance expenses due to ceasing to maintain superfluous tracks.

#### PART VI. THE DOMINION AND THE PROVINCES—PUBLICITY—GENERAL.

##### RAILWAY COMMISSION CONTROL.

We have referred more than once in this report to the board of railway commissioners for Canada, and have recommended that the system of the trustees should be subject to their jurisdiction. We

attach great importance to this recommendation. Hitherto this board has had jurisdiction only over the railways that are in the hands of companies. It has had no jurisdiction over Government lines. We think that this distinction can not be justified, and that the commission should have jurisdiction over all railways other than those operating solely under provincial charters. The public may from time to time have just cause of complaint against the management of any railway. It is not right that anyone, even a Government official or a public trustee, should be judge in his own cause. Moreover, unless the final decision in matters of rate policy and the like is in the hands of a single authority, there may be in Canada two conflicting policies at the same time. There is yet another reason on which we would lay stress. Railway policy is sealed book to the ordinary citizen. Why tariffs should be fixed as they are, why the train service should not be arranged so as better to suit his individual requirements, why cars can not always be available for everybody everywhere, he can not understand. The normal attitude of the public toward the railway management, whether in the hands of a company or a Government, is one of mistrust, if not of active hostility. It is a good thing for both the railway itself and for its patrons to bring the management out into the open; to have the reasons why such and such conditions exist, why certain concessions demanded can not reasonably be granted, frankly explained in public. If there is nothing else gained, it is a great thing to have brought the complainant and the railway officer face to face. Even when they fail to agree, they are likely to understand each other better in the future.

#### COMMISSION TO REPORT ON CHARTERS.

In a second respect also we recommend that the jurisdiction of the railway commission should be enlarged. Charters for new railways are granted by the Dominion Parliament in great numbers. In the years from 1900 to 1908, 116 charters were granted for 37,862 miles of line. Only 453 miles were actually built. In the two following years there were granted, according to a statement made in the Senate by the Hon. Mr. Davis, on April 6, 1910, respectively, 68 charters for about 68,000 miles, and 75 charters for about 75,000 miles. We think that no charter should be granted till the proposals made have been investigated by the commission and the commission have reported whether or not, in their opinion, the construction of the proposed line would be for the public advantage. The opinion of the commission will not necessarily bind the action of Parliament. But Parliament, before deciding, should have the benefit of the advice of an expert and impartial authority.

#### AND NO SUBSIDIES AND GUARANTIES.

We think also that no subsidy or guaranty should be granted except after a similar report from the commission; and that no subsidy or guaranty should be voted in any session unless it has been provided for in the financial budget of the year, and unless a substantial deposit of cash or securities has been made by the promoters to prove the bona fides of their application.

## OVERLAPPING OF DOMINION AND PROVINCIAL CONTROL.

Cases have occurred in the past and may again occur in the future, in which railways are chartered by Provincial Governments, competing with railways under Dominion charters, and so withdrawing from the latter some portion of the traffic required to secure the solvency of their line. This is not in the public interest. It can not be for the general advantage of Canada that a provincial charter should be granted, and in most cases also provincial financial assistance given, with the result in the first place of withdrawing traffic from a road with a Dominion charter, and so forcing that road to fall back upon the guaranty which has to be met out of the general taxation of the country; and secondly, of placing upon the Province a burden of guaranty which the Province subsequently finds itself unable to bear, and which ultimately it has to throw back upon the Dominion itself. The Dominion Government, when the Canadian Northern applied for the large loan of \$45,000,000 in 1914, was confronted with the possibility, if not probability, that some of the Provinces would default on their guaranties as the result of the entirely disproportionate liabilities which they had assumed.

It would perhaps be difficult for the Dominion and provincial authorities to agree upon such an amendment of the British North America act as would for all time prevent the recurrence of such a situation as occurred in 1914, as a result of the Provinces deeply pledging their credit not for an intraprovincial but for an extra provincial undertaking, clearly outside their proper ambit. The Dominion Government ought, however, to use the existing powers of the act. The policy should be laid down that, so soon as any provincial legislature incorporates a railway, it becomes the duty of the railway commission forthwith to investigate the necessity in the public interest of its construction; and further, in cases where financial aid by guaranty or otherwise is given by the Province, to ascertain what provision has been made for meeting the liabilities which may thereafter accrue. The commissioners should with all speed report their findings and the evidence on which they are based to the governor general in council. And in any case in which it is found that the railway is not required in the public interest, or that guaranties have not been accompanied by proper financial provisions, the governor in council should exercise his undoubted prerogative and disallow the provincial act. It is necessary for the sake of the credit of the Provinces as a whole to make sure that no Province with a population of less than 400,000 shall again take the responsibility for a guarantee of \$40,000,000 in respect of a single undertaking.

We think also that a single company should not be under duplicate control. Take for instance the Canadian Northern main line. If it is not for the public advantage of Canada as a whole, it has no justification for existence. Yet the portion of the line in British Columbia was constructed under a British Columbia charter; and a small section of the line in Saskatchewan under a Saskatchewan charter. It can not be reasonable in principle that one portion of the through route should be regarded as of general advantage, while another portion of the same route, feeding it and being fed by it, is regarded as of only local interest. And from the point of view of

practical administration it is highly inconvenient. We recommend that, in respect of all future charters, the Dominion Government come to an understanding with the provincial governments that a railway company shall be either wholly national or entirely local. In other words, neither provincial charter nor provincial aid should be given to companies or subsidiaries of companies already possessing a Dominion charter; and on the other hand Dominion aid should only be given to companies with a Dominion charter.

We further recommend that there be conferred on the commission power to prescribe minimum as well as maximum rates, so that reckless and unfair competition may be prevented. A railway that gives to any members of the public a service below cost is unfairly discriminating against the rest.

#### AUDIT AND PUBLICATION OF ACCOUNTS.

We think it is of great importance that adequate accounts and statistics should be kept and published. We consider that the board of trustees should keep and furnish to the railway commissioners, and publish for general information, exactly the same accounts and statistics as the other railway companies are required to furnish. Further, we think the accounts of the board of trustees should be continuously audited by a firm of public accountants, appointed by the finance minister. This firm should be selected from those with special experience of railway work. And they should not only conduct a financial audit in the strict sense, but should be instructed to advise the trustees from time to time what improvement in accounting methods can be introduced, and what special investigations of cost can be undertaken with good hopes of economies resulting. It is within our knowledge that modern methods of cost accounting are at the present time being applied to railways on this continent with considerable success. And we feel that in taking over the management of so large an undertaking, with a mileage exceeding that of any railway system in the world except that of the Prussian State, the trustees should have the benefit of the best and the most up-to-date advice obtainable. The auditors should make a full report to Parliament once a year on the financial status of the Dominion Railway.

The railway commission should in each year submit to Parliament the accounts received both from the Dominion Railway and from the other railway companies, and should accompany them by a report of their own. This report should set out in as simple and concise a manner as possible the financial relations between the Dominion Railway and the Government, so that every citizen may have a clear idea once a year what total amount of taxation he is called upon to pay for railway purposes. The report would naturally divide the total charges into subsidies, guaranties, and other suitable heads. And those charges should be taken up into the general budget of the finance minister as a separate and distinct entry. Any subsidies or guaranties given by the Government to railways other than those comprised in the Dominion Railway system should be included by the finance minister in the same statement. It must be for the Government and the people of the country to decide how much money they will find out of the general taxation for their railways.

But, in order that they may decide rightly, it is essential that they should have full information, and that it should be brought before them in an easily intelligible form.

At present, railways operating solely under provincial charters are under no obligation to make returns to the Dominion ministry of railways. Consequently there is no complete record of the entire railway activities of the country. We think that the Dominion Government should come to an understanding with the provincial governments that returns should be made to the latter by their local companies in the same form as is required in the case of Dominion companies, and that copies of these returns should be filed also with the Dominion Government.

#### RAILWAY COUNCILS.

There is another matter that we desire to bring to the attention of the Government and the trustees. In several countries in Europe, more especially in Prussia, there has been developed with great success an organization of railway councils. These councils are both national and regional. The national council in Prussia is composed of: (1) Official representatives of the Government departments specially concerned with railways questions, the ministries of communications, commerce, agriculture, etc.; (2) of representatives of chambers of commerce, of agriculture, of mines, and other persons competent to speak for large sections of railway customers. The regional councils are of a similar constitution, but on a smaller scale as benefits their local limitations. These councils meet twice a year or oftener, and discuss a prepared agenda with the chiefs of the railway service. They are competent to deal with questions of rates and fares, facilities, extensions, improvements, and all other matters affecting the public interest. They have no executive powers whatever. They can only criticize, dissuade, or recommend. But the universal testimony of competent observers is that the system is a success: that the influence of the councils is considerable, and the result harmony and absence of friction between the railway administration and the public.

We do not think that the time is ripe for the formal organization of a similar system in Canada. But we think the central idea is valuable. And we suggest that the trustees, when they get into harness, should consider the propriety of calling a conference of representatives of merchants, manufacturers, agriculturists, mine-owners, etc., and discussing with them all such questions as involve the interests of the public as well as the railway. And we think the Canadian Pacific Railway should be invited to join the conference. If the experiment proves a success, it will no doubt be repeated. And we should hope it would ultimately result in a permanent organization.

#### RAILWAYS IN EXCESS OF EXISTING REQUIREMENTS.

We feel that we ought to draw attention to another important point. There are now three trunk lines in existence running from Winnipeg through the comparatively empty country north of Lake Superior. There is very little local traffic, and not much prospect for

its early development. The through traffic will be shared, in what proportion the future must decide, between the three routes. But we may assume that the Canadian Pacific Railway will be able to retain on its own through route all the traffic which it itself originates. And the two new routes will only get the balance to carry. It can not, we think, be expected that this balance will be sufficient for a good many years to come to make these two lines self-supporting. It seems to have been generally assumed that they would afford an important outlet for the grain of the prairie Provinces. Evidence that we have had before us seems to show that only quite a small fraction of the grain exported from these Provinces has hitherto followed the rail even as far as Montreal. The proportion that goes through all the way by rail to the Atlantic seaboard must be even smaller. And there seems no reason to suppose that this proportion will vary to an important extent. For a difference of something like 10 cents per 100 pounds between the charges for rail carriage and water carriage, respectively—and this we understand to correspond to the normal state of affairs—will always enable the water routes to retain their hold on the traffic. It follows, therefore, that an increase of 100,000,000 bushels of wheat exported from the prairies might only mean an increase of 2,000,000 bushels; that is, 2,000 carloads, or 50 trainloads, of railway traffic. This conclusion is borne out by statistics of the Canadian Pacific Railway, from which we find that in the year 1911, out of a total revenue on the Lake Superior Division (the line between Fort William and Sudbury), amounting in round figures to \$12,000,000, less than \$900,000 were earned from the carriage of grain and flour, including grain and flour for local consumption as well as for export, while \$6,100,000 were earned from other freight, and \$5,000,000 from passengers, mail, and express.

To show how much traffic is required to fill a railway up to its capacity and to enable it to pay interest on its cost of construction, we have made the following calculation. The minister of finance stated in Parliament on May 15, 1916, that in the 11 months ending February 2, 1916, which included the record harvest of 1915, Canada exported 180,000,000 bushels. This is equal to 5,400,000 tons of grain. We will assume that the whole of this grain went from Winnipeg to Fort William-Port Arthur. There were three roads to carry it. This gives 1,800,000 tons available for each road. Assuming the trains to run with an average net load of 1,200 tons—and in fact they usually carry much more—each road would need to run 1,500 trains, or for the 11 months an average of only  $4\frac{1}{2}$  trains per diem. Evidently, even under the quite exceptional conditions of the harvest of 1915—and how exceptional this was is sufficiently shown by the fact that in the corresponding 11 months of the preceding year the export was only 90,000,000 bushels, or just half—the three railways would not be worked to anything like their maximum capacity. Let us see what the net earnings would have been. We take the average rate for the carriage of grain at 4.2 mills per ton per mile, and we will assume an operating ratio of only 66 per cent. Then the net earnings would have been 1.4 mills per ton per mile. And, as 1,800,000 tons went over each road, the net earnings would have been  $1.4 \text{ mills} \times 1,800,000 = \$2,520$  per mile of road. These net earnings would pay interest at 5 per cent on a cost of road amounting to

\$52,400 per mile. Now, the average cost of a mile of road in Canada is over \$70,000. In other words, if we assume that the roads between Winnipeg and Port Arthur were built at an average cost, even the exceptional volume of grain traffic of the year 1915 would not alone have sufficed to pay interest at 5 per cent on the construction cost, though the whole grain traffic of the prairies was concentrated on them.

#### HIGHWAY IMPROVEMENT.

We think the Government would do well to give serious consideration to the question of the cost of bringing grain from the farm to the railway station. The desire of the farmer to reduce the cost of marketing his grain to the lowest possible point is natural. We do not believe that any serious reduction of rail rates can be expected, and no one can say what ocean rates will be in the future, but we think that the wagon cost is capable of considerable reduction. We find that an average rate per 100 pounds from Battleford, taking this as a typical point, to Liverpool may be put at not more than 50 cents by the all-rail route to Montreal. By water from Port Arthur, which route carries the vast proportion of the traffic, the through rate would not be more than 40 cents per 100 pounds on the average. On the other hand, typical examples of the cost of wagon haulage have been brought to our notice. We find instances of a cost of 33 cents per 100 pounds for a distance of 12 miles and of 54 cents per 100 pounds for 35 miles. And we are informed that in some cases grain has to be hauled as much as 50 miles to a station. In other words, in cases such as these the cost of delivery at the station is as much as or even more than the total through rate from the station to Liverpool. What method should be adopted to cheapen local haulage is a matter for detailed consideration in each individual case. But either by road improvement, coupled possibly with an organized system of mechanical traction or by the construction of short spur lines of the lightest and cheapest possible type, we are persuaded that a good deal might be done at a very moderate expense. And we therefore commend the matter to the serious consideration of both the Dominion and the Provincial Governments.

#### THE HUDSON BAY RAILWAY.

We understand that construction work on the Hudson Bay line has been suspended. We think that the work should not in any case be recommenced till more urgent needs have been met and money is more easily procurable. And if work on the line is begun again, we think it should be done in the most economical manner possible, and only up to the standard of a local line, bearing in mind that it can not be expected for many years to come to be self-supporting. Considering the small advantage in rail mileage from the grain-growing areas, which the Hudson Bay possesses over the existing routes to Port Arthur, and that from many districts it possesses no advantage at all; considering further the short and uncertain period of navigation in the bay, and that grain consigned to Port Nelson will consequently always be liable to be detained there for nine months till navigation is again opened; considering that higher ocean freights may be expected to absorb, if not more than absorb, any possible

saving in rail rates, we can not believe that this route will ever secure any serious share in the export trade. Still less can we think that it will handle an import business. Unless considerable mineral wealth should be discovered in the territory which this line will open up, it must, we fear, continue to be almost indefinitely a burden upon the people of Canada. And everything that can be done should be done to make this burden as small as possible.

#### STEAMSHIP CONNECTIONS.

The question of steamship connections on both oceans is referred to us. We have not reported on it. To deal adequately with a question of such vast range was impossible in the time and with the means at our disposal. Further, the complete revolution that the war has caused in the shipping trade of the world would, we feel, make any conclusions or recommendations based on a study of either war or prewar conditions valueless for guidance after the war. The question of steamship connections naturally involves the question of ports. This question also we have refrained from touching. For port facilities depend on available steamship connections quite as much as steamship connections on the facilities available at the ports.

#### TENDENCY OF RAILWAY RATES TO RISE.

Before concluding our report we desire to make one observation of a general nature. The average ton-mile rate in Canada in the last financial year was 0.751 cent; in the United States the figure was 0.7320 cent, which is practically the same. In the United States it is coming to be generally understood that this rate is too low to give the railway companies an adequate return on their existing capital and that consequently new capital can not be attracted to railway investment in sufficient amount to provide for necessary new expenditure. And this fact was to some extent recognized in October, 1914, by the Interstate Commerce Commission in their approval of a flat increase of 5 per cent (with certain exceptions) on all tariffs in the portion of the United States adjacent to eastern Canada. And if an average rate of 0.732 cent is inadequate in the United States, where traffic is far more dense, and where climatic conditions are less rigorous, much more is an average rate of 0.751 cent inadequate in Canada. It is true that with the present rates the Canadian Pacific Railway pays a dividend of 7 per cent from railway operation. But as we have already pointed out, that company has some \$200,000,000 invested in the property on which no interest has to be paid. Were this sum represented by ordinary stock, the dividend from railway operation would be not 7 per cent but 4 per cent. And the Canadian Pacific has the cream of the Canadian business.

#### NECESSITY FOR IMMEDIATE ACTION

It is to be anticipated that difficulties, more or less great, will need to be overcome before a final settlement can be reached with the Grand Trunk and Canadian Northern Railway Companies. We realize that, if the matter were dealt with in the ordinary manner, it might be a matter of months, if not years, before a final settlement was reached.

The pressing public interest demands that the matter be not so treated.

We think instructions should be given by the Government forthwith, without waiting for further action on this report, to the Canadian Northern and Grand Trunk Pacific companies to discontinue all expenditure on works in hand, unless and until express permission is received for their continuance.

We will enumerate certain other matters that will not brook delay. In the West the Canadian Northern is not giving, and is not able to give, adequate service to the grain-growers in some important districts which are dependent on its lines. The situation in the Goose Lake district is highly unsatisfactory. The branch is in bad shape and is not fit to do the business offering. There is absolutely no room for doubt as to the lack of freight cars and the resulting inconveniences, and even in many cases distress. In the East the position of the Grand Trunk is most unsatisfactory. Beyond question the system immediately requires at least 200 more locomotives and at least 10,000 freight cars. If coal famines are to be avoided, and the proper winter movement kept up, the line from Burlington Junction to Fort Erie urgently requires double tracking. Other improvements are imperative. The question of electrification ought to be taken into consideration forthwith.

If things go on as at present, the traffic conditions of this year will in all probability return in an aggravated form next winter. The old equipment will be a little older, the roadbed will be in a little worse condition. And the situation in eastern Canada has been so bad this winter, that there has been much difficulty, specially at Grand Trunk points, in maintaining a supply of grain and flour from the West. It is imperative that strong and efficient action be immediately taken.

Recognizing the probability of delays, caused by the efforts of the companies to secure better terms from the Government, we think that, in order to protect the business interests of the country, the Government should immediately put itself in a position to obtain orders appointing receivers for the Grand Trunk and Grand Trunk Pacific systems. We recommend that, at the present sitting of the House, an act be passed constituting the board of trustees, so that in case, receiverships are necessary, the trustees may, on the application of the Government, under its existing rights as a creditor, be appointed receivers. They would then be in a position to take, through the courts, the necessary steps to vest the properties in the Dominion Railway Co. so as to constitute the new system that we have recommended. Should the companies show themselves ready and anxious to come to a prompt agreement, actual application to the courts would of course not be made.

We feel that the appointment of receivers is not in the interest of the country's credit. It certainly is not in the interest of the companies, as the evidence of this report shows that the property of the Grand Trunk Co., if it were put into a receiver's hands, would leave little or nothing for the shareholder. The result of court proceedings would probably be to divest the shareholders of all interest, and to place the Government in the position to take, to the fullest extent, the advantages of their legal position as holders of defaulting securities. But, though we hope receiverships will not be necessary, we

think the Government must face the possibility of being compelled to take the course we have indicated.

In the case of the Canadian Northern Railway Co. no proceedings in court are requisite. Under the provisions of section 24 of the Canadian Northern railway guarantee act, 1914 (4-5 Geo. V, chap. 20), the Governor General in council has power, when authorized by Parliament, to declare by order, if default is made by the company in payment of interest on the \$45,000,000 guaranteed securities (the interest on which is at present being found by the Government) that the equity of redemption of the company is absolutely barred and foreclosed; and thereupon the whole property becomes vested in His Majesty in right of the Dominion of Canada.

If receiverships become necessary, the advantage of appointing the trustees as receivers is obvious. The trustees, with the Government behind them, and with the approval of the court, would be in a position to operate the roads as a combined system, to purchase much needed rolling stock and to make essential improvements in a way that no ordinary court receiver could do. Receiverships in the ordinary sense would only result in greater traffic congestion than ever and in losses not only to the shareholders but to the country at large.

#### PART VII. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS.

We summarize our conclusions and recommendations as follows:

1. The mileage of Canadian railways is very great in proportion to the population of the country. It has increased out of proportion to the increase of population.

2. Canada's natural waterways make railways less absolutely necessary than in other countries.

3. The net return is so low as to prove that more railways have been built than can be justified on commercial grounds under present conditions.

4. The public investment in railways is very large. The total amount of public capital involved in direct construction of Government lines, and cash aid, land grants, and guaranties to private companies, is \$968,451,000, not counting the value of lands still unsold.

5. Public aid to the principal companies, including subsidies, land grants, and guaranties, amounts to over \$680,000,000. In the case of the Grand Trunk Pacific it amounts to nearly two-thirds of the total investment; in the case of the Canadian Northern to over three-quarters.

6. There have been three phases of company development: (1) Unaided enterprise, (2) assistance by subsidies and land grants, (3) assistance by guaranties. A guaranty policy is dangerous and its wisdom questionable.

7. The development of Canada justified two transcontinental lines. It did not justify three. The Grand Trunk and Canadian Northern should have been amalgamated.

8. The Grand Trunk Pacific system has cost nearly \$200,000,000. The interest charges amount to over \$8,800,000 per annum. The net income last year was \$826,653. The liability of the Grand Trunk Co. for interest amounts to over \$5,000,000 per annum at present, and will rise to over \$7,000,000 in 1923.

9. We can not recommend that the Grand Trunk Co. be unconditionally released from their liability. The responsibility for the National Transcontinental line rests mainly with the Government, but that for the Grand Trunk Pacific proper belongs primarily to the Grand Trunk. The Government has voluntarily relieved the Grand Trunk of all responsibility for the National Transcontinental. In respect to the Grand Trunk Pacific proper the Government is fully entitled, morally as well as legally, to call upon the Grand Trunk Co. to fulfill its contract.

10. The Grand Trunk Co. proper has made unjustifiable charges to capital. Its lines have not been adequately maintained. More than \$21,000,000, which ought to have been spent on maintenance in past years, has not been spent. New capital expenditure of over \$30,000,000 is immediately required. The country is suffering from the company's inability to give adequate service. The Grand Trunk Railway ought to be managed in Canada, and not from London.

11. We recommend that the control both of the Grand Trunk Pacific and of the Grand Trunk be assumed by the people of Canada on terms hereafter set out.

12. The Canadian Northern has been financed mainly by the issue of guaranteed securities. Till 1914 it met the interest from its own resources. Since that date the Government has assumed very heavy obligations on behalf of the company. There is little prospect that the company would be able in the near future to relieve the Government of these obligations.

13. The company's estimate of its future capital requirements is too low, and its estimates of probable growth of earnings have been and still are unduly sanguine.

14. We estimate that as a separate undertaking it would require fully \$70,000,000 of new capital within the next five years.

15. We do not recommend that further public aid be given to the Canadian Northern as at present constituted.

16. The Canadian Northern common stock represents no cash investment, and has no present value, either on the basis of the cost of reproduction of the property or on the basis of its earning power.

17. We recommend that the public take control of the Canadian Northern Co. on terms hereafter set out.

18. On the assumption that the people of Canada take control of the Grand Trunk, Grand Trunk Pacific, and Canadian Northern, we consider possible methods of management and operation.

19. We do not consider that operation by a minister directly responsible to Parliament would be in the public interest. It would not secure better service or lower rates.

20. If the Government operated these three railways, it would be bound in fairness to the Canadian Pacific shareholders to take over their railway also. The Canadian Pacific gives good service and should not be interfered with.

21. Special objections to direct Government ownership and operation are:

(1) That Canadian railways operate more than 7,000 miles of line subject to the foreign jurisdiction of the United States;

(2) That the Canadian Government resources are required for war purposes.

22. We therefore reject the idea of direct Government ownership and operation.

23. We do not recommend that the Grand Trunk, Grand Trunk Pacific, and Canadian Northern companies be allowed to go into the hands of a receiver.

24. We recommend that the control of these three companies be transferred to a new body.

25. We have discussed and rejected the following suggestions:

Transfer of all three railways to the Canadian Pacific.

Transfer of the Canadian Northern or a portion of it to the Canadian Pacific.

26. There is no possibility of forming a new commercial company to take over the three railways. Neither the Mexican precedent, under which the Government becomes a majority shareholder, nor the New York subway precedent, under which the public authority shares the profits with the private shareholder, is applicable to this case.

27. Having come to the conclusion that direct ownership and operation by the Government is to be avoided, and that ownership and operation by a commercial company is not possible, we recommend that a new public authority, a board of trustees, be incorporated by act of Parliament as the "Dominion Railway Co.," and that the Canadian Northern, Grand Trunk, and Grand Trunk Pacific be transferred to this body.

28. We recommend that the Government assume responsibility to the Dominion Railway Co. for the interest on the existing securities of the transferred companies.

29. We recommend that the Intercolonial and National Transcontinental be also transferred to the Dominion Railway Co. for reasons which we give hereafter.

30. We recommend that the whole of the Dominion railways be operated by the trustees as one united system, on a commercial basis, under their own politically undisturbed management, on account of and for the benefit of the people of Canada.

31. We recommend that there be five trustees, three railway members, one member selected on the ground of business and financial experience, and one as specially possessing the confidence of railway employees; that the original trustees be named in the act constituting the board; and that their tenure of office be substantially the same as that of judges of the Supreme Court.

32. We recommend that the original trustees retire after 3, 4, 5, 6, and 7 years, respectively, according to a prescribed scheme; that they be eligible for reappointment; and that all appointments subsequent to the original statutory appointments be by the Governor General in council on the nomination of the trustees themselves.

33. We lay stress on the importance of the board being nonpolitical, permanent, and self-perpetuating, and in this connection point to the experience of the Australian State railways.

34. We give reasons for concluding that railways are not a proper subject for direct parliamentary control. We point to a general tendency in modern democracies to withdraw certain subjects from this control. And we show that under parliamentary control the general interest of the whole community tends to be subordinated to the particular local and individual interests.

35. We recommend that the authority of the railway commission be extended to include the Dominion Railway Co.'s system.

36. We give the reasons for our recommendation that one of the trustees shall be appointed on the ground of his possessing the confidence of the railway employees.

37. We recommend the transfer to the trustees of the common stocks of the Canadian Northern, Grand Trunk, and Grand Trunk Pacific, subject to certain conditions and reservations made hereafter.

38. We recommend the transfer to the trustees of the Intercolonial and National Transcontinental Railways for reasons which we give hereafter.

39. We deal with the question of the compensation to Canadian Northern shareholders. We find the charge that Messrs. Mackenzie and Mann have misappropriated public moneys unfounded. We find that the Canadian Northern shareholders possess a system of which the lines are well located and economically constructed, and that they have raised the necessary money with considerable financial skill and at moderate rates of interest, but that they erred in unwisely duplicating lines and reaching out into unremunerative territory.

40. We recommend that the question be considered whether Canadian Northern shareholders shall be permitted to retain a moderate proportion of the \$60,000,000 shares which they now hold; that the precise proportion, if any, and the relation of that proportion to their share of any future profits of the Dominion Railway Co. be fixed by arbitration.

41. We recommend that the entire share capital of the Grand Trunk, guaranteed, preference, and ordinary, be surrendered to the trustees in exchange for an annuity based on a moderate but substantial proportion of \$3,600,000, the average sum paid as dividend in the last 10 years; and that this annuity should increase by 40 or 50 per cent after the first seven years.

42. We recommend that the precise figures be fixed by agreement and that it be left to the directors of the Grand Trunk Co. (1) to apportion the annuity among the five classes of Grand Trunk shareholders, and (2) to procure such assents of their shareholders as are legally required to complete the transfer.

43. We give reasons for considering that this recommendation is generous to the Grand Trunk shareholders, and why the shareholders in their own interest will do well to accept it.

44. We recommend the transfer to the trustees of the National Transcontinental, in order that it may take the place it was built to take as part of a great interocean highway, and because its financial position would be hopeless if it terminated in a dead end at Winnipeg.

45. We recommend the transfer of the Intercolonial: (1) In the interest of the maritime provinces to whom the Intercolonial at present can only give a local service, with no adequate terminals beyond Montreal; (2) in the interest of the taxpayer, who has a right to demand efficient and economical expenditure of his money; (3) in the interest of the railway staff, who will secure the wider opportunities of a great system.

46. We recommend that in future the Intercolonial be required to pay local taxes on the same basis as the other railways, and that the inhabitants on the line receive statutory protection against increase of local railway rates.

47. We make recommendations as to (1) nonrailway property of the transferred undertakings, (2) getting in minority holdings of shares and outstanding titles to land, (3) arrangement with the holders of Canadian Northern 5 per cent convertible income debentures.

48. We deal with the legal position of the trustees; and point out that the Canadian Northern, Grand Trunk, and Grand Trunk Pacific companies will continue to exist; and that consequently the rights of their security holders will remain undisturbed.

49. We recommend that the trustees take over each railway as soon as the transfer can be effected, with the purpose of ultimately operating them all as a single unified system.

50. We deal with the finances of the Dominion Railway Co. and point out that the Intercolonial, with no bonded indebtedness, has a considerable net revenue, and offers security on which new capital can be raised. We recommend the creation of a general and refunding mortgage of unlimited amount, to be issued as required.

51. We recommend that the act of Parliament provide that the operation of the company shall be on a commercial basis, and that the trustees make no general reduction in rates until the property earns a reasonable net return.

52. We recommend that there be given to the trustees the widest powers in the management of their property.

53. We have endeavored to estimate the annual liability of the Government to meet interest unearned during the first few years of the new scheme, and we put it at about \$12,500,000 per annum. We think this amount should diminish steadily but not slowly; and that with proper economic and politically undisturbed management the attainment of a satisfactory financial result is only a question of time.

54. We give specimens of the large economies which should result from combined operation.

55. We recommend the enlargement of the functions of the railway commission; that it have jurisdiction over all Dominion railways; and report to Parliament on all proposed grants of charters, subsidies, and guaranties.

56. We deal with the conflict of Dominion and provincial jurisdictions. We recommend that, to prevent this in future, the governor in council should in certain cases disallow provincial acts, and that no railway company should operate under both Dominion and provincial acts.

57. We recommend that there be a continuous public audit of the Dominion railway accounts, and that full and comprehensive reports be made annually to Parliament.

58. We recommend the establishment of railway councils to bring together the railway management and representatives of public interests.

59. We point out that the existing railways are in excess of public requirements and show how much traffic is required to make a railway profitable.

60. We show that the cost of hauling grain to the station is sometimes as great as that of carriage from the station to Liverpool, and recommend that the question of highway improvement and motor haulage be taken into consideration.

61. We recommend that future expenditures on the Hudson Bay Railway be reduced to the lowest possible amount.

62. We point out that railway rates are much more likely to rise than to fall in the immediate future.

63. And finally we lay stress on the necessity for immediate action lest Canada should suffer from railway congestion even worse than that of the past winter.

Respectfully submitted.

H. L. DRAYTON.  
W. M. ACWORTH.

#### REPORT OF MR. A. H. SMITH.

The commission was asked to report upon the general problem of transportation in Canada. Several subdivisions of the subject quite naturally suggested themselves, and were made a part of the problem to which the commission was requested to give attention. Practically all of the subdivisions have received consideration, but the general problem is essentially a question of what to do with the railroads of Canada. To a constructive solution of this important problem the commission has given its attention.

#### THE GENERAL PROBLEM OF TRANSPORTATION IN CANADA.

For a proper understanding of the problem, a knowledge is necessary of the history of railway development in Canada, especially as affected by the public policy, which has found expression in governmental acts.

Canada early recognized that its growth depended upon the construction of railways. The large productive areas of the country could be served only in a limited way by its splendid system of waterways.

Even before the eastern Provinces became united into the Dominion of Canada, the Grand Trunk had become an important railway line, serving the people both of Canada and the United States. The Intercolonial, as is well known, was constructed out of public funds, and largely for the purpose of bringing more closely together, commercially and politically, two more or less separated sections of the Dominion. Long in advance of its justification upon a commercial basis, an all-Canadian transcontinental line was projected by the government and completed with extensive public aid by a private company as the Canadian Pacific.

Because of the great distances which separate parts of Canada's producing territories from the consumer's markets, development of the country's resources depended upon railway building, while cheap transportation was necessary to enable the people to compete with other producers. The people of Canada, therefore, gave such aid as was necessary to procure for themselves railway lines that would bring the country's resources into use and keep themselves in touch with the outer world.

Cheap transportation depends upon careful investment and efficient management. In the usual case, these are most likely to be found where private initiative and proper incentive to effort are employed. So far, Canada, for the most part, has pursued the policy of leaving

to private enterprise the management of its transportation machinery. The Intercolonial, which has been under governmental control since its beginning, is an exception. But this line, I am informed, usually pays nothing to the Government as a return upon money invested in the property. On the contrary, it has frequently called upon the government for aid in meeting expenses of operation. The investment in this line is large, some authorities placing it as high as \$348,000,000, including loss of interest. Evidently its rates are too low or its expenses too high, but the use of this line, at the rates enforced, is regarded in some quarters as a right of the people in the maritime Provinces. If the Canadian people have ever made an agreement, or adopted a policy which may be construed as creating that right, the contention may be correct. It is, at any rate, within the power of government to grant such a privilege. The fact is referred to merely to point out in connection with what I shall say later that a railroad may be built either as a commercial enterprise and for ordinary commercial purposes, or as a public undertaking and for other purposes, which are within the proper scope of government. The two should not be confused. But it should be kept in mind that when government builds and operates a railway which does not pay its way, including proper maintenance and interest upon investment, taxation is relied upon to support transportation upon that line. The burden is shifted from the user to the general public, but the processes by which this is done are often so complex as to obscure the facts, and actual costs are not ascertainable.

The Canadian Pacific affords a later example of the internal development policy of the Government. That road had its beginning in a transcontinental project that was proposed to be carried out directly by the Government. At an early date, and it seems to me wisely, that purpose was altered—it was decided to have the road completed by a private company. But the undertaking was large, the population sparse, the prospect of profit remote, so that the Government not only turned over to the company the uncompleted road, upon which it had expended a large sum, but it also extended to the company generous aid in the shape of land grants, cash subsidies, guaranties, and loans. It is true that value was given to the land grants largely through the building of the road and the opening of the territory to settlement. The important point here is that the Canadian Pacific owes its later and continued success not only to the skill and enterprise of its builders and managers but to the fact that, through liberal direct aid, it was able to begin business with a small charge against its earnings on account of borrowed capital. Thus favorably started, the company was able to devote its energies and surplus income to the development of the road and the country.

A new transportation problem arose with the settlement of the prairie Provinces, where the land is devoted chiefly to raising grain and live stock. Owing to the long hauls that intervene between the producer and consuming markets, freight charges absorbed a considerable part of the proceeds. The Great Lakes afforded the least expensive route to the east and tidewater. But these Lakes are open only part of the year, and navigation closes before the season's crops can be moved from the Lake ports. With the filling up of the country and consequent increase in production came a general demand for additional means of transportation. While land speculation probably had no little influence, the farmer felt the effect of

inadequate facilities, and any project that promised relief appears to have found approval among citizens who were able, through their legislatures, to bring public aid to the development of these enterprises. Railroads, therefore, were not only actively in demand, but railroad builders were popular and had little or no difficulty in obtaining public support for proposed new lines.

The Canadian Pacific stood as an example of success, to be repeated by newer railways. Unfortunately, too little attention appears to have been given to the underlying facts which actually made that road what it was. Experienced men apparently believed that a second Canadian Pacific might be had if they could but lay a trans-continental road, build great hotels, passenger terminals, and operate ocean steamers. These things were only the outward evidence and not the cause of the Canadian Pacific's prosperity. It may even be that they contributed little to the strength of that company's financial condition if due account be taken of all the costs, investment as well as operating, involved in carrying on such enterprises.

In May, 1903, a royal commission of transportation, of which Sir William Van Horne was chairman, was appointed "to consider questions affecting transportation of Canadian products to the markets of the world through and by Canadian ports, with a view of placing the Canadian producer in a position to compete, and compete successfully, through all Canadian ports with the producers and exporters of other countries." The report of this commission is interesting. It clearly reflects the effect of the outlook which great opportunities and a land boom had upon the minds of the people. All kinds of transportation projects were recommended. For instance, the Grand Trunk Pacific was to be extended to Moncton; the Intercolonial was to be extended to Georgian Bay, etc. New canals were to be built, and old ones widened and deepened. This commission also recommended a bounty for Canadian-built ships, toll-exempt canals, additional waterways to be opened at public expense, and the acquisition of water terminal lands out of public funds. In other words, it was clearly the intent that transportation should be stimulated by subsidies from the public treasury.

It would now seem that there could not have been in sight enough traffic to justify the extensive development here recommended. However, many of the things proposed in this report have been done, and other ambitious schemes not here mentioned have since been brought out. The point in mind is that without making a specific declaration of the fact, as far as I know, Canada's policy for years appears to have been to promote the public welfare by means of building or aiding in the building of transportation lines throughout the Dominion.

It is unfortunate that Canada did not have a policy of regulation in this period which could have prevented needless duplication of lines and facilities. Competing lines have been built where effective regulation could have saved a large part of the investment, while completely satisfying every reasonable and proper need for service. Instead of coordination and conservation under Government supervision, railways were permitted to duplicate plant in fields not yet productive enough to support the one; the Government, on the other hand, was, in one way or another, aiding both projects, if it had not indeed itself promoted either or both projects. Very naturally, it

has not and could not have obtained the benefit which should have followed a correct program of government aid. The policy of government aid makes the need for regulation of railway building more necessary even than where private capital is depended upon, for in the latter case the proposal must at least have a promise of commercial success before capital can be induced to come in and give it support. To the absence of such regulation must be charged responsibility for no small part of the railway problem of to-day.

We may well inquire here as to the effect of this policy upon the three principal systems. The Grand Trunk Railway Co., feeling no doubt that its own traffic field had been invaded by the government-aided Canadian Pacific, desired in turn to enter the promising western territory. Accordingly, it proposed to build a line from North Bay to the Pacific coast. Public aid was required and granted in a way to insure the building of the road. If any serious thought was given to coordinating existing or proposed roads, and to utilizing them for the public good, it did not find public expression in any constructive way. The Grand Trunk Railway Co. evidently felt confident in the success of its plans, for it pledged its own credit in aid of the extension, and entered into contracts which it now finds quite beyond its ability to carry out.

Canadian Northern interests, directed by Mackenzie, Mann & Co., who since an early date had been operating local lines in Manitoba, seized the opportunity afforded them for expansion and rapidly extended their rails throughout the Prairie region. The records show that the Canadian Northern had a large mileage on the prairies before the projection of the Grand Trunk Pacific, so that when the extension plans of the Grand Trunk became a part of the national policy, as they did become, the Canadian Northern was added to the number of those who wanted to own a transcontinental system and one as fully complete and self-contained as was that of the Canadian Pacific. Hence we find two new companies, both built largely upon public credit, striving for first place in a field which, as for transcontinental transportation, or even as for connecting eastern and western Canada, was already occupied. Besides having the Great Lakes waterway, there could have been barely enough business to support one additional line, and that only by the exercise of economy in operation and prudence in investment.

The Canadian Pacific, enjoying splendid credit, with adequate powers and resources, and keenly alive to the possibilities of losing business to competitors challenging its supremacy everywhere, then entered the contest by undertaking to build new lines in an effort to protect its sources of revenues.

The stimulation felt throughout the country by the influx of settlers and by the importation of so much new capital not only created a boom, but it quite naturally affected prices for labor and materials, sending these soaring; the increased prices in turn contributed largely to the higher costs, which are now reflected in the construction accounts of the new roads.

This brings us fairly to a recognition of the fact that while the policy of public aid to railways had originally been founded on the urgent need for transportation to open up a new country, to develop its resources, and to unify Canada commercially and politically, it was carried far beyond the limits warranted by the original exigency.

It appears to me that the responsibility is as much the Government's as the private companies'. Without enabling legislation and the extension of government credit from which all received their essential support, the companies could not have expanded and overbuilt.

This policy, in so far as it aimed at the development of Canada, appeals to me as sound, and fully justified in its inception, but it needed to be supplemented by some form of supervision that would have insured to the people the benefits of that policy without the losses that have followed the effort to assist development indiscriminately.

The situation must be faced as it exists. It is not possible to undo what has been done: the money which has been spent can not be recalled. The immediate and obvious thing to do is to adopt a constructive and discriminating program, first, for correcting the conditions which necessitate continuing loss and waste, even where that would require the abandonment of useless property, and, second, for controlling new construction. The scrap heap is frequently the most economical disposition available for inefficient plant and machinery.

**STATUS AND USEFULNESS OF THE THREE TRANSCONTINENTAL RAILWAY SYSTEMS—THE CANADIAN PACIFIC RAILWAY SYSTEM, THE GRAND TRUNK RAILWAY SYSTEM (INCLUDING THE GRAND TRUNK RAILWAY, THE GRAND TRUNK PACIFIC RAILWAY AND THEIR SEVERAL BRANCHES), THE CANADIAN NORTHERN RAILWAY SYSTEM.**

The Canadian Pacific Railway is essentially self-contained and self-sustaining. I agree with my colleagues as to its financially strong position. It has world-wide commercial strength. As a result of the aid and privileges extended by Government, together with the prudence and progressiveness of its management, which has extended its field of activity over nearly all Canada, and through its steamship lines and commercial organizations throughout a large part of the world, it is a success.

The Canadian Pacific is well built, well maintained, and has adequate terminals and equipment. It is efficiently operated. It is somewhat at a disadvantage in crossing the mountains, and elsewhere it has gradients that, compared with more recently built lines, do not make for as good trainload and operating efficiency. It is assumed that the Canadian Pacific will make improvements as the need for them arises, for it is fully able to do so.

Accorded reasonable treatment that company will continue, I am sure, to give good service, and I believe the best interests of Canada will be served by continuing the present status of the Canadian Pacific. The introduction of Government railway competition, which might have no regard for investment or cost of operation, would be unfair and, in the end, would react disastrously upon the Canadian people. The regulating power affords to the people of Canada adequate protection in the matter of rates and services, and such power should likewise protect the company.

*The Grand Trunk System.*—The fortunes of the Grand Trunk Railway Co. are bound up with the Grand Trunk Pacific. It stands as guarantor for large sums of money invested in the railway and has advanced millions from its own resources in an effort to develop the

western line and its subsidiary properties. The Grand Trunk Pacific Development Co. has absorbed many millions of Grand Trunk capital without definite prospect of return, and to the Grand Trunk Pacific Branch Lines Co. large construction advances have been made. Not only is the Grand Trunk committed for many millions, but the Government has directly invested large sums of money in this property and guarantees, other large sums, the total of which exceeds \$127,000,000.

The Grand Trunk Pacific was located on a scale that would do credit to any single-track line. There is not enough business to justify such an outlay, and the prospect for business which will warrant the cost seems quite remote. For long distances sections of this line parallel one or more other lines.

That part of the Grand Trunk Pacific lying between the Rocky Mountains and the Pacific coast is in a country which appears to have abundant natural resources. In time these may be developed to the advantage of this road.

The port of Prince Rupert is suited for a large ocean traffic, which is nonexistent. The development of Alaskan trade seems to present the most immediate possibility for this port and railway.

The road west of Winnipeg has some disadvantages on account of expensive trestles and instability of embankments. It has good grades, but inadequate terminals at important places. It has sufficient equipment but lacks feeders.

From the Rocky Mountains to Winnipeg the presence of a parallel road raises a question as to whether the Grand Trunk Pacific line is not the best adapted by location and physical condition to handle the trunk-line traffic. If it is not the best, then the disposition of this part of the road, with its branches, naturally depends upon its usefulness as a road serving local interests.

From Winnipeg east to North Bay and Port Arthur the Transcontinental and Grand Trunk Pacific Railroads together can give efficient service as a connecting link between the railways of eastern and western Canada. This road also affords a good line for traffic moving via the Great Lakes. In fact, it is probably the best route of any for hauling bulk commodities at low costs.

Officers of the Grand Trunk Railway Co. claim that the Government is morally bound to relieve the company of the Grand Trunk Pacific, because the Government is responsible for the failure of the project, having permitted a rival company to enter the field. The rival line, however, has been constructed at a lower cost per mile, and manages to get enough traffic to pay its operating expenses and a large part of its fixed charges, which can not be said of the Grand Trunk's system west of North Bay. I feel that I am not called upon to discuss the merits of the Grand Trunk's claim against the Government. I have no doubt the Government has observed at least the letter of its contract.

Standing alone, with efficient operating conditions imposed, there is no reason, within my knowledge, why the Grand Trunk Railway proper should not become a profitable operation. It occupies a good territory, reaching some of the best traffic centers in the United States and Canada, and has American connections that ought to contribute to its welfare. The company needs terminal improvements in cities and modern equipment, especially locomotives. The need for equipment is pressing and should be met.

*The Canadian Northern System.*—The lines of the Canadian Northern, particularly in the prairie provinces, appear to be advantageously located in view of traffic conditions. Inspection of the property brings out the fact that this road was built with proper regard for economy and the creation of a permanent public-service utility.

In some instances, the system has extended its lines where it should have obtained a traffic interchange agreement or the joint use of facilities instead, at least until the traffic had grown enough to justify further expansion. A public policy intended to develop and serve the country as a whole, at the lowest cost, would have enforced arrangements which would have obviated the needless duplication of facilities.

The line from Yellowhead Pass to Vancouver, in part at least, may be unnecessary, but it is there by the joint action of Government and the company. The character and capacity of this line through the Fraser River Canyon, where it is alongside the Canadian Pacific for about 200 miles, would suggest that no more money should be spent for double-tracking or revising grades on either of the railroads for years to come. From Yellowhead Pass to Edmonton, the proximity of the Grand Trunk Pacific places two lines where one affords abundant capacity.

The invasion of the east by the Canadian Northern now appears to have been unwise, but condemnation thereof must be tempered with a knowledge of the conditions which forced this extension. There was a public demand for railroads. All Canada was enthusiastic over the prospects of a rapid growth in wealth and population. Railroads were on a competitive basis, and the public stood ready to back any new railroad enterprise, since that meant a rival carrier, and, incidentally, a new business in construction. There was no regulation which enforced cooperation among rival lines. The Canadian Northern, seeking to expand and become a profit earner, quite naturally desired to get all the traffic it could, and to hold all it got for as long a haul as possible. As a result, it undertook to do what appeared to be necessary under the conditions then existing—that is, to extend its line to both oceans.

An inspection of this company's property shows that generally it is of a type of construction well suited to its needs, and that the builders have installed it at a cost which, by comparison, seems small. Nowhere was there evidence of waste in the construction work itself. It is true that the company had some construction under way, or planned, that appeared wasteful because unnecessary, but this is due, I understand, to the unregulated competitive system, or to bargains with public authorities.

The building of expensive terminals in cities already supplied with adequate facilities affords an example of duplication for which the public must eventually pay. However, in the absence of restraint and regulation by consistent public authority, it is difficult to determine how the company could have avoided this.

The precarious financial situation of the Canadian Northern is due, in part, to its uncompleted condition, and to the fact that needed capital can not be obtained on its own resources, especially during the period when capital is so greatly in demand by powerful governments. This system is not at present able to earn all of its fixed

charges. As important parts of the system have but recently emerged from the construction period, it would be truly remarkable if it were able to do so. It does earn a very large proportion of such charges, and probably could earn all of them but for the burden of eastern extensions and duplications that have been placed upon it. Practically all commercial enterprises, and particularly railroads, must go through a development period.

The Canadian Northern is short of equipment. With the return to normal conditions, and provided with the capital necessary for equipment and for additional local facilities, this road can, in my judgment, work its way out in a reasonable time.

#### REORGANIZATION.

We are asked to make suggestions in regard to "the reorganization of any of the said railway systems or the acquisition thereof by the State; and in the latter case, the most effective system of operation, whether in conjunction with the Intercolonial Railway or otherwise."

The first practical question is, therefore, the need of reorganization of any of these three transcontinental systems; the second is whether they should be acquired by the State; and the third is whether the status of the Intercolonial can be changed; and, if so, can the road be advantageously grouped with either of the three systems.

In such suggestions as I shall make, I am influenced by consideration of the public policy as evidenced by past governmental acts. I further assume that the existence of these roads through the direct aid and sanction of government is conclusive evidence of the fact that the people really desire them. That they were built in advance of their need for ordinary commercial uses—a fact which is emphasized by the present abnormal economic situation—does not appear to me a sufficient reason for condemning the policy of national development, or the wisdom and integrity of those who have built the roads under that policy. Neither do I think that there exists any condition to warrant taking up a new untried public policy, which may lead to greater difficulties than those which are now faced.

The history and standing of the Canadian Pacific Railway, and its public service as a carrier to-day, is sufficient assurance that it does not need reorganization. The scope of its business, extending to other lands by steamships and commercial connections, and the control of many thousands miles of railroads in the United States, would afford sufficient reasons, if none other existed, for dismissing the idea of its acquisition by the State.

So much of the Intercolonial as is serviceable to the Canadian Pacific appears to be now used by it, either as a local connection or through trackage rights. Moreover, the two have existed separately for many years as competitors and no new reason appears why the relations of the Intercolonial and Canadian Pacific should be changed for the future, unless the people of Canada are satisfied that better results would be obtained for the territory served by the Intercolonial if it were in the hands of the Canadian Pacific.

The Grand Trunk Railway Co. has stated that it is beyond its power to assume and carry the obligations which would be imposed upon it if it should try to become such a transcontinental system as

the plans of 1903 contemplated. The company has not attempted to bring about the organization of a system approximating that of the Canadian Pacific or even the Canadian Northern, nor can it do so.

In view of the parent company's inability to carry out its original plans, and to discharge its obligation, the question is, What disposition is to be made of the various roads which were intended to be, but did not become, parts of one operating system?

My colleagues have recommended that the stockholders of the Grand Trunk Railway Co. be paid an annuity which is to be a "moderate but substantial portion of \$3,600,000, the average dividend payment for the last 10 years." This recommendation is in spite of the facts noted in the report that there are arrears in maintenance which require the expenditure of twenty-one millions of dollars, and that the company has charged to capital items which should properly have been charged against income, these facts indicating that there have been some dividends paid which have not been earned. Considering this situation and also the obligation of the company in the west, I am not impressed with the justice of paying an annuity to the stockholders in exchange for a surrender of this property. I also would be liberal to them, but I would allow them to keep their property and give them a chance to work out their own salvation. To that end I would recommend that a settlement be effected between the Government and the Grand Trunk Railway Co. The railway can not carry out its part of the contracts, and it should be relieved of further embarrassment. On the other hand, the stockholders of the Grand Trunk Railway should be required to curtail or forego their dividends for the present and the entire earnings be applied to the rehabilitation of the road through a term of years. The Government thus gives up a present claim which the debtor can not pay anyway; in turn, it will enjoy improved and extended service which may be worth far more to the welfare of the people. I should also give the Government some claim upon the future earnings of the Grand Trunk, so that it may share in any future prosperity which this action makes possible.

Reorganization of the Grand Trunk is desirable only in so far as it shall be required to put itself in shape to discharge efficiently its functions as a carrier. Whether it shall retain all of the subsidiaries which it has accumulated through the past 50 years depends in large measure on what they can contribute to the main property. Careful study of each of the subsidiaries will lead to definite conclusions from the standpoint of the Grand Trunk and its future welfare.

What the Grand Trunk needs most of all is to be relieved upon equitable terms of the embarrassment that it has incurred through the failure of the transcontinental scheme. The acquisition by the State of the Grand Trunk Railway proper presents much of the embarrassment that would obtain in the effort to acquire the Canadian Pacific, for here also, in addition to the question of equity involved, there is the problem of some 2,000 miles of railroad owned in the United States, and the fact that the Grand Trunk's principal seaport is in the United States.

The investigation of the Canadian Northern by the commission has disclosed evidence of skill in construction and efficiency in management, considering the means and equipment available. The company even now earns a large part of its fixed charges, although important parts of the system have been in operation for but a year. I think

there is ample justification for confidence that the affairs of the company will improve with the return of normal conditions. I see no reason for a change of management or a reorganization, excepting as hereinafter suggested.

It may be well here to consider the relation of the Intercolonial to the other roads and the possibility of operating it in conjunction with any of them. We have shown its relation to the Canadian Pacific. The main line of the Intercolonial is about 1,000 miles, from Montreal to Halifax. It has occupied the territory for 50 years and has become adapted to it. There are apparently no operating economies available by combining it with another system that are not available to it alone. Assuming proper regulation, there appears to be no traffic interchange that could be better assured by merger. I am informed that the maritime Provinces consider the use of the Intercolonial as a right to which they are entitled. Moreover, the Government has built the Transcontinental, a part of which was in compliance with plans of the Grand Trunk, while the rest of it is so placed that it ought to continue to be operated in conjunction with the Intercolonial. The present status of the Intercolonial and the eastern part of the Transcontinental should be continued as a Government operation. The results of such operation should, however, be reported to the people of Canada in exactly the same form as is required from other railroads. And these roads should be subject to the same reasonable regulation as is exercised over all other railroads.

Mention might be made here of the railroad that the Government is building from the Saskatchewan River to Hudson Bay. The object in the construction of this road has been stated to be that of obtaining a shorter haul from the western Provinces to Europe. The bulk of the traffic to follow this route must necessarily be diverted from the roads extending from Winnipeg to the east, so that the project seems to be an instance of competitive construction which can not be justified in this case, even on the ground that it opens up new territory.

There are numerous local railway projects, within provincial limits, which at the moment seem to have little effect upon this general railroad problem. Disposition of these may well await developments as to their necessity and utility when they assume operation. There is little that can be said just now as to their probable relation to the existing means of transportation.

The Great Lakes and the St. Lawrence River furnish a natural route from the western country to the east and to the Atlantic Ocean for a part of the year. Numerous steamship lines between Port Arthur and Georgian Bay or the lower lakes and St. Lawrence River ports afford adequate transportation under normal conditions, though somewhat affected by customs requirements and other factors. In view of the heavy movement of grain in the last three months of navigation, regulations governing shipping should be as favorable as practicable, for the hauling of grain over the long distances to the eastern seaboard by an all-rail route involves a problem in car supply and cost which renders such a haul unprofitable for rail lines.

The success of the Canadian Pacific steamship lines has led to the suggestion by some that the other railroads ought also to establish steamship lines. I do not believe that this success was primarily due to the railroad ownership of the ships. Temporarily the war seems

to have put a stop to plans for railroad-owned steamships. If at the close of the war it is to be tried again it would seem advisable first to ascertain whether other ships can not be induced to schedule sailings before railroads incur the responsibility of making additional investment in ships. There are ships running in regular postal routes with subventions. Perhaps the Government might well require, in connection with its subventions, that ships give equal service to the railroads without discrimination among them, thus removing another cause for the employment of duplicate facilities.

In visiting the various ports I was impressed with the facilities installed and being installed. At Halifax, particularly, important works were actively under way, necessitated, I believe, by the overseas traffic for war purposes. It is likely that the future development of steamship terminals in connection with railroads will be difficult to fix until normal conditions resume. Meanwhile the Atlantic seaports are so much involved in the emergencies of war as to place them beyond the scope of this inquiry. In any event such works of harbor improvement and development as are the result of war measures will be there at the close of the war as a foundation for what the future may hold.

I am unable to join my colleagues in their recommendations. They propose that practically all of the railways in Canada, except the Canadian Pacific and the American lines, shall be turned over to a corporation to be managed by a board of trustees appointed by the Government. They insist that this board is to be permanent and self-perpetuating. I do not know by what means one Parliament can bind its successors to a given policy, especially in so simple a matter as changing the organization of a Government board. My friends seek to avoid Government ownership and operation—in fact, condemn it as inadvisable—but propose a plan which contains so many elements of danger in the direction which is sought to be avoided that I am unable to join them.

Their plan would add about a billion dollars to the direct debt of Canada. The interest on this is about forty millions, adding very largely to Government expenses. Judging from the experience Canada has had with its Government railways, it is fair to assume that this would remain a permanent burden. Operated by private companies, this interest would ultimately be borne by the companies without recourse to the Government funds and at the same cost of service to railway patrons as would obtain under Government operation.

Their plan also leaves out some of the railways. This is unfair to the investors whose property is to be subjected to Government competition. It also discriminates in the method by which the respective properties are to be acquired. I can not approve the proposed centralization of control. There are problems local to separate regions which often require prompt action and cooperation between the railroads and the people served. There is a need everywhere for that prompt and efficient service which can come only from a knowledge of local conditions and responsibility for meeting them. I can not believe that centralization, remote responsibility and control, will insure good service to the people of Canada.

The recommendation creates a Dominion Railways Co., owned by the Dominion Government, to take over those roads. There are

about 7,000 miles in the United States controlled by Canadian companies. The Canadian railways depend for no inconsiderable portion of their revenue on United States traffic. A fundamental defect of the plan, therefore, is in placing the Government in the railroad business, not only in Canada, but also in operating railroads in the United States subject to both Federal and State regulation.

Through private railway management Canada has obtained about 1 mile of railroad for each \$30,000 of Government aid of guarantees, which is but a fraction of the cost of Government railroad undertakings. In some instances a large proportion of the aid was in land, the value of which was produced by the building of the railroad and the settlement thereby made possible. Compared with the total outlay involved in producing railroads by the Government for itself, as, for instance, the case of the Intercolonial or the Transcontinental, from three to six times that amount have been used to realize equal results. This shows distinctly the value of enlisting and retaining private enterprise.

#### THE OBVIOUS REMEDY.

Let us review the salient facts concerning each company:

The Canadian Pacific is amply able to take care of itself. It can and does provide competition with the other railroads. In order to be most serviceable to Canada, it should be continued, subject only to such equitable regulation as is accorded to all lines.

The Grand Trunk succeeded in the east and failed in the west. The Canadian Northern succeeded in the west and was jeopardized by its eastern expansion.

There is extensive duplication of lines in the west; the unsuccessful Grand Trunk Pacific lines are found among the successful Canadian Northern lines. Public policy demands the unification of these lines, for great economies could be thereby accomplished.

There is extensive duplication in the east—the new Canadian Northern lines among the older lines of the Grand Trunk proper. Great economies in proposed investment and operating expenses await the joint working of these properties.

There is wasteful duplication in the connecting region between North Bay and Winnipeg, where the Canadian Northern line parallels the Government line. Economy awaits the joint working of these lines.

Consideration of all phases of the problem leads me to recommend the following remedies for the existing situation:

Let the Canadian Pacific alone; let the Grand Trunk operate the eastern lines now held by that company and the Canadian Northern; let the Canadian Northern operate the western lines now held by that company and the Grand Trunk Pacific system; let the Government operate the connections or procure their operation by private companies; all of which should be done under arrangements that are equitable and yet look to the not distant day when the country will have survived the war and resumed its prosperous growth.

There may be several ways by which this can be brought about, but the one that has appealed to me is that which seems to be the least disturbing of values and credit and involves no untried schemes

or protracted disputes. Therefore I beg to make the following suggestions:

1. Amend the regulating policy so that the railway commission may have jurisdiction over all railroads in the matter of maximum and minimum rates, the issuance of securities, the building of new railways, or the extension of lines, and other matters properly within the scope of governmental supervision.

2. Create a board of trustees, consisting of two Government officials and three private citizens, to act for the Government in the matters hereinafter proposed.

3. Relieve the Grand Trunk Railway Co. of its obligation to lease the Transcontinental and require the company to relinquish all claims upon the Transcontinental; require it to lease to the board of trustees the Grand Trunk Pacific railroad properties at a rental amounting to the net annual fixed charges; require it also to take under lease the Canadian Northern properties east of North Bay and Parry Sound and pay as a rental the net fixed charges on those properties. The time of the lease should be for 21 years. The Grand Trunk's investments other than railroad in the West may be disposed of by the company as it may elect and in accordance with its best interests.

4. Require the Canadian Northern Railway Co. to confine its operation to the field west of Winnipeg. Relieve it of the line east of Winnipeg by leasing for 21 years to the governmental board of trustees at a rental of the net annual fixed charges. Require it to take a lease of and to operate for the same period the Grand Trunk Pacific Railway and its branch lines, paying as rental the net annual fixed charges upon those properties; except that until seven years after the end of the war they shall have the immunity that was promised the Grand Trunk Pacific for a period of seven years after construction and that they shall not be required to assume any of the extraneous investments of the Grand Trunk system in the West.

5. Lease the lines between North Bay and Winnipeg (except the Canadian Pacific's) for a term of 21 years to either the Canadian Northern or the Grand Trunk (or in the event neither applies, to any other qualified company), requiring the lessee to furnish the necessary capital for new equipment and to maintain and operate the lines on the best terms that can be made; terms that would give the best service needed at lowest cost to the Government being regarded as best. Either the Government or the lessee should build a connecting line of about 30 miles near Long Lake, Ontario, to protect the better working of the two lines.

6. The Government and companies should have the option of terminating, after 10 years, any of the leases upon equitable terms.

The foregoing recommendations are made with a view to obtaining for Canada a maximum of efficiency at a minimum outlay. The continuance of Government aid, to some of the railroads at least, will be necessary under any plan. The plan herein proposed seeks to reduce this to the lowest possible point and to centralize it upon those parts of the existing lines which are not self-supporting, and which, in the nature of things, can not be self-supporting for years. These connecting links, "bridges," as they have been called, exist, it seems to me, as a result of that public policy which has been discussed at some length. The Government may well afford

to take them over and maintain them as necessary parts of the public investment in the country's development. They are not of sufficient importance to bring about those dangers inherent in Government operation of this kind on a large scale, and holding them will not endanger private enterprise. It may be necessary in working out this plan to grant some additional and temporary aid to the Canadian Northern, and it will be necessary to effect some compromise with the Grand Trunk Railway Co. which will enable this company to continue. Aid should be extended upon the recommendation of the board of trustees, who should be charged with the duty of investigating the need of and approving the aid to be rendered by the Government; they should also see that the Government receives for that aid such security as will give it a reversion in case of default.

The recommendations here submitted are to be considered as a general outline of what appears to be a fair solution of the transportation problem. Enabling legislation will be required in any case, and I realize that there are many technical and legal questions which will require careful attention at expert hands. If the general plan is adopted, my thought is that the board of trustees which I have suggested be charged with the duty of acting for the Government in all matters requiring new contracts, and shall protect the interest of the Government in every way while leasing, operating, or financing the property under their care to the best advantage, due consideration being given to the rights of the other parties at interest.

If for any reason it should prove inexpedient to carry out the foregoing suggestions and if the Government should find it wise or necessary to possess itself of and to hold any considerable part of the railway properties, I should recommend as an alternative plan the formation of a private company to take over other operations of those properties either as a whole or in groups. Even where a road does not earn its fixed charges the Government could profit in the long run by making the terms of an operating lease sufficiently attractive to induce private enterprise to undertake its management. The terms of the contracts would naturally depend upon the extent of the property and the prospect of earnings, but they could be so drawn as to prove attractive to private capital and at the same time relieve the Government of the expense and embarrassment of Government operation. Such contracts might be based upon a profit-sharing plan on a fair basis, which would leave the company a hope of reward commensurate with its efforts and give the public also a share in the prosperity which they must help to create.

I should like to add one other thought. The railways of Canada are in desperate need of equipment. Whatever decision is made with reference to the railways, the transportation problem is now acute in so far as equipment is concerned. I would therefore recommend that the Government undertake at once to provide an ample supply of freight cars and locomotives against immediate and imperative needs. These cars and engines may be had, if desired, under truck agreements. It will be a simple matter to turn these cars and engines over to the operating companies under lease or contract of purchase which may be exercised when conditions are more nearly normal.

Concluding, I would be loath to suggest recourse to any radical changes in the domestic policy of the Dominion of Canada in the time of war and stress. Remedial measures are often more efficacious than revolutionary ones and more equitable. I have been impressed by the seriousness of your transportation problem and in sincerity express my belief that the problem can be successfully and satisfactorily remedied by just and mutual recognition of difficulties and full and free cooperation between the Government and the railroads. Fair and broad treatment of the question will, I am convinced, bring capital and personal genius commensurate with the exigencies of the present situation and capable of developing a happy solution. I believe that the best results hitherto have been obtained by the efficiency and economy of private initiative, energy and capital. It is no longer assumed that the self-interest of the railroad investor and operator is antagonistic to the interest of the public; rather, we have all learned, governments and corporations alike, that the two are inseparately linked and must stand or fall together. Upon these fundamental truths I base my firm conviction that the brightest outlook for the future of your great Dominion can be assured through the extension of private railroad enterprise. The hope of honor and the reward of public approval must be open to human kind to get the best results from human endeavor.

Facing the urgency of the need, considering the part which the Government has taken and the responsibility which it shares, and keenly alive to the magnitude and the importance of the tasks now placed upon the railroads and the greater tasks which they will face, I see no safe alternative but the Government shall continue with discrimination and resort to all available safeguards and under a policy of proper regulation and cooperation of effort, to aid the necessitous railroads of the Dominion until such time, which I hope and believe will not be far distant, when these will become self-supporting and the problem will be solved.

Respectfully submitted.

A. H. SMITH.

NEW YORK, April 25, 1917.







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